

Ethnic Profiling in Europe: Counter-Terrorism Activities and the Creation of Suspect Communities

*Submission of the Open Society Justice Initiative to the Eminent
Jurists Panel on Terrorism, Counter-Terrorism and Human
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The practice of ethnic profiling by European police forces in the context of ordinary law enforcement has been increasingly gaining attention from regional human rights watchdogs such as the European Commission against Racism and Intolerance and the European Union Fundamental Rights Agency, little attention has been paid to the use of ethnic and religious profiling in the fight against terrorism. While less visible than some of the egregious human rights abuses, such as rendition, associated with current counter-terror efforts, profiling has profoundly negative impacts and, because of the pervasive nature of many profiling practices, it affects large numbers of people directly, and stigmatizes entire communities. Official profiling amounts to a tacit endorsement of broader social ethnic and religious discrimination. Finally, the fact that the evidence indicates that profiling is not only ineffective, but is actually counter-productive as it alienates and reduces trust and cooperation in those communities where good relations are most needed to address terrorism and its underlying discontents, calls for increased attention and close scrutiny of terrorist profiling in current European counter-terrorism efforts.

The Open Society Justice Initiative, which works around the globe to foster rights-based law reform, has been studying and addressing ethnic profiling by police in Europe since January 2005. We were concerned, on the one hand, by long-standing allegations of police discrimination against Roma and other visible minorities in the course of ordinary crime-prevention activities and, on the other, by reports of law enforcement and security targeting of Muslims in the fight against terrorism. The objectives of the Justice Initiative's *Ethnic Profiling in Europe: Criminal Justice and Counter-Terrorism* project are to: (1) to increase awareness of the issue, in part through research and documentation, among law enforcement officers, human rights advocates, policymakers and the general public; (2) press for the adoption of a clear European norm and national legislation that explicitly bans ethnic profiling in all contexts, including counter-terrorism; and (3) support the development of national civil society and police capacity to work together in developing and applying good practices to monitor and remedy discriminatory patterns.

Project activities to date have included quantitative and qualitative research on ethnic profiling in Bulgaria, Hungary, Russia, and Spain¹ and coordination of the multi-country, European Commission-funded STEPSS ("Strategies for Effective Police Stop and Search") project, which is identifying strategies to improve police relations with minority communities through more accountable and effective use of police powers to stop, check identity, and search individuals. In January 2008 the Justice Initiative will publish a comprehensive report on profiling and discriminatory policing practices in both ordinary criminal justice and counter-terrorism efforts across Europe, from which is drawn this submission to the International Commission of Jurists. In all of its efforts relating to ethnic profiling, the Justice Initiative works in close consultation both with affected communities and with regional networks and NGOs such as the European Network against Racism, Migration Policy Group, European Roma Information Office, Amnesty International, Statewatch and others.

The Justice Initiative greatly appreciates the opportunity to submit these written comments to the International Commission of Jurists' Eminent Jurists Panel on Terrorism, Counter-Terrorism, and Human Rights. The panel's mandate to examine the compatibility of laws, policies and practices that are expressly or implicitly justified as necessary to counter terrorism with international human rights law and its focus on the impact of terrorism and counter-terrorism measures and policies on the protection of human rights in the European Union is commendable. We hope that this intervention will add to the rich discussion at the upcoming sub-regional hearing on the European Union.

Table of Contents

<u>THE OPEN SOCIETY JUSTICE INITIATIVE</u>	1
<u>INTRODUCTION</u>	2
<u>ETHNIC PROFILING: DEFINITIONS AND LEGAL STANDARDS</u>	1
<u>WHAT IS “ETHNIC PROFILING”?</u>	1
<u>INTERNATIONAL AND REGIONAL LEGAL STANDARDS</u>	2
<u>ETHNIC PROFILING IN THE EUROPEAN FIGHT AGAINST TERRORISM</u>	6
<u>MASS IDENTITY CONTROLS</u>	6
<u>DATA MINING</u>	8
<u>ANTI-RADICALIZATION STRATEGIES</u>	8
<u>RAIDS OF BUSINESSES, PLACES OF WORSHIP, AND HOMES</u>	9
<u>ARREST AND IMPRISONMENT</u>	11
<u>MONITORING OF MUSLIM INSTITUTIONS AND ORGANIZATIONS</u>	12
<u>THE EFFECTIVENESS AND IMPACT OF ETHNIC PROFILING IN THE FIGHT AGAINST TERRORISM</u>	15
<u>THE EFFECTIVENESS OF TERRORIST PROFILING STRATEGIES IN EUROPE</u>	17
<u>THE IMPACT OF PROFILING ON EUROPE’S MUSLIM COMMUNITIES</u>	19
<u>CONCLUSION</u>	22

Introduction

One of the most basic principles of the rule of law is that each person will be treated as an individual and on the basis of his or her personal conduct, and will enjoy equal justice under the law. This principle is being undermined in the current fight against terrorism in the European Union, as law enforcement and security officials engage in the practice of ethnic, racial and religious profiling. The terrorists attacks in New York (September 2001), Madrid (March 2004) and London (August 2005), coupled with the emergence of “home-grown” terrorists, led many to argue that the calculus of what enforcement tactics are permissible and necessary to fight terrorism has changed. Many politicians, policy-makers, and members of the public sharing the perspective of former British Home Office minister Hazel Blears, who in 2005 stated that “If a threat is from a particular place then our action is going to be targeted at that area...It means that some of our counter-terrorism powers will be disproportionately experienced by the Muslim community,”ⁱⁱ

Profiling is a tactic that lies at the centre of these debates, and no community has felt the impact of this shift more than the Muslim community. Muslims in the EU are targeted for mass identity controls, data mining, “radicalization” monitoring; raids of businesses, places of worship and homes, arrest and imprisonment, and surveillance of Muslim institutions and organizations.

While ethnic, racial, and religious profiling may pale in comparison with the gravity of other abuses associated with the fights against terrorism – extraordinary rendition, secret detention, torture – it is nonetheless worthy of close scrutiny. First, it is a pervasive practice. From street stops to airport searches to massive data mining by national security agencies, profiling infects counter-terrorism activities at every level. Second, it stigmatizes whole communities. Widely practiced without much scrutiny, profiling insidiously and wrongly suggest that racial and/or religious discrimination is acceptable. Thirdly, it is ineffective. Not only does profiling fail to combat crime or terrorism; it may, by fostering more alienation, worsen the relationship between law enforcement agents and the very people whose confidence it needs to engender in order to prevent future acts of terrorism. More generally, it contributes to general alienation of a large portion of European society.

Starting with an overview of the definition of and the legal standards concerning profiling, these written observations go on to examine the evidence of explicit profiling and other tactics that focus excessive law enforcement attention on Muslims communities, followed by an assessment of the effectiveness and necessity of these tactics.

Ethnic Profiling: Definitions and Legal Standards

What is “Ethnic Profiling”?

Ethnic profiling is the use of racial or ethnic stereotypes, rather than individual behaviour, as a basis for making law enforcement and/or investigative decisions about who has been or may be involved in criminal activity.ⁱⁱⁱ

Profiles as such are not illegal. Indeed, they form a core component of law enforcement activities. Profiles are compilations of identifiable characteristics believed to correlate statistically with certain conduct, and have been used by police for many years to identify a set of markers or characteristics that may assist in selecting relevant information or narrowing down the search for individuals who meet specific traits. Thus, “criminal profiling” refers to the development of a defined set of characteristics or circumstances to identify individuals who are likely to engage in criminal activities by introducing social science and statistical methodologies to enhance long-standing police techniques. This technique is used in the tracking of serial killers, and also in immigration and border checks for contraband such as drug smuggling and other forms of organized crime.^{iv} While some research calls into question the practical utility of criminal profiles, they are generally viewed as useful and lawful by the police.^v

Profiles become problematic when they rely on global generalizations about a particular ethnic or religious group’s propensity to commit a crime. Even where there exist legitimate and necessary uses of ethnicity, religion and national origin in law enforcement operations, there are limitations on the degree to which these fundamentally immutable characteristics may be the driving factor – as opposed to operational intelligence – in guiding police investigations.

Police profiling may take place systematically, through explicit orders, but it may also result from the cumulated effect of individual officers’ decisions, some of whom may be racist, but many of whom are not, and are unaware of the degree to which generalizations and ethnic stereotypes are driving their subjective decision-making about which individuals to stop and check.^{vi} In any discretionary action, an officer will use his or her accumulated experience in making decisions about who to investigate. While racist individuals in law enforcement institutions certainly contribute to profiling, ethnic profiling remains persistent and pervasive precisely because it is the result of habitual, and often subconscious, use of widely accepted negative stereotypes in making decisions about who is suspicious. In addition to individual officer decision-making, institutional policies and decisions about resource allocation can also drive disproportionate focus on minority communities. Policy decisions of this sort often reflect larger public and political concerns and, in some cases, public prejudices.

Both in explicit profiles and in discretionary decision-making by officers, ethnicity or race is such a powerful marker that many experts argue that it will almost always predominate in law enforcement decision-making and should never be incorporated in a profile.^{vii} Thus, even as courts have often taken a narrow and conservative approach to profiling,^{viii} experts and official policy guidance in the United Kingdom and the United States is clear about the need to reflect the routine and non-deliberate use of race, as well as the explicit incorporation of race in a

profile. For example, the British Police and Criminal Evidence Act (PACE) of 1984 expressly addresses profiling in defining the reasonable suspicion standard to stop and search in the United Kingdom stating that “[r]easonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity.”^{xix}

Opinions differ on the statistical probability of ethnicity as a marker for different types of crime.^x Yet, even where there is a known ethnic difference in offending, the fact that there exists a statistical basis for some profiles—that the stereotypes are based in fact to a substantive degree—is not necessarily a sufficient justification to warrant their use under the law.^{xi} By definition, it is true that jihadi terrorism is committed by Muslims, yet this is not a useful piece of information in the effort to narrow the focus of police attention, given the number of Muslims in the world and in Europe. To cast suspicion on people because of their race, ethnic origin or religion violates the basic legal principle of treating people as individuals, based on their actions, and is a form of race discrimination.

International and Regional Legal Standards

No international or European norm expressly forbids ethnic profiling as such. Nonetheless, the principle standard-setting inter-governmental bodies within the United Nations and the Council of Europe – the Committee on the Elimination of Racial Discrimination (CERD) and the European Commission against Racism and Intolerance (ECRI) – have made clear that ethnic profiling violates the *jus cogens* prohibition against ethnic and racial discrimination.

The United Nations Race Convention prohibits racial discrimination with respect to “freedom of movement”^{xii} and the “right to equal treatment before the tribunals and all other organs administering justice.”^{xiii} Both the general equality provision^{xiv} and more specific guarantees^{xv} of the International Covenant on Civil and Political Rights (ICCPR) prohibit racial discrimination in relation to “the right to liberty and security of the person,” outlaw “arbitrary arrest or detention,” and bar deprivation of liberty “except on such grounds and in accordance with such procedure as are established by law.”^{xvi}

These universal standards have been reinforced by intergovernmental declarations.^{xvii} Thus, in 2000 the Programme of Action at the UN World Conference against Racism urged “[s]tates to design, implement and enforce effective measures to eliminate the phenomenon popularly known as ‘racial profiling’....”^{xviii} In 2003, CERD recommended that States and international organizations “ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, color, descent or national or ethnic origin.”^{xix} More recently, in condemning the September 11 attacks “unequivocally,” CERD emphasized that, as the prohibition against racial discrimination is a peremptory—hence, non-derogable—norm, states must ensure that counter-terrorism programs do “not discriminate in purpose or effect on grounds of race, color, descent or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping.”^{xx} CERD has also urged states to “take the necessary steps to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person’s color or features or membership of a racial or

ethnic group, or any profiling which exposes him or her to greater suspicion.”^{xxxi} In a number of country-specific declarations, CERD has indicated that racial profiling in counter-terrorism operations is not permissible.^{xxii}

International and regional rules of police conduct make clear that racial and ethnic discrimination is inconsistent with good practice and the duty to enforce the law. The United Nations Code of Conduct for Law Enforcement Officials^{xxiii} provides that rights protected by the United Nations Race Convention, as well as other international instruments prohibiting racial and ethnic discrimination, are among those “human rights of all persons” that law enforcement officials must “maintain and uphold.”^{xxiv} The European Code of Police Ethics of the Council of Europe expressly recommends that “[t]he police shall carry out their tasks in a fair manner, in particular, guided by the principles of impartiality and non-discrimination.”^{xxv} The Code also prohibits interference with an individual’s right to privacy^{xxvi} and states that police investigations shall, as a minimum, be based upon reasonable suspicion of an actual or possible offence of crime.^{xxvii} The code also states that police investigations shall be objective and fair.^{xxviii}

The December 2006 opinion of the EU network of independent experts on fundamental rights on the legality of ethnic profiling found that:

[T]he consequences of treating individuals similarly situated differently according to their supposed ‘race’ or to their ethnicity has so far-reaching consequences in creating divisiveness and resentment, in feeding into stereotypes, and in leading to the over-criminalization of certain categories of person in turn reinforcing such stereotypical associations between crime and ethnicity, that differential treatment on this ground should in principle be considered unlawful under any circumstance.

The opinion goes on to note that “the wide discretionary powers of the police in ‘stop and search’ procedures and the absence of any monitoring of the behaviour of the police [...] “are particularly problematic, since they create a sense of impunity within the police and of powerlessness—but also resentment—among the targeted minorities.”^{xxix} The opinion states that, in order to provide adequate protection against ethnic profiling, a legal framework must: clearly prohibit the practice; facilitate proof of profiling by allowing ethnic statistics to be gathered; clearly define police powers; and sanction such behaviours both through criminal penalties, civil remedies and administrative or disciplinary sanctions.^{xxx}

The European Court of Human Rights has articulated legal standards for assessing claims of discrimination, which reflect those in international law.^{xxxi} In particular:

[T]he principle of equality of treatment is violated if the distinction has no objective and reasonable justification. The existence of such a justification must be assessed in relation to the aim and effects of the measure under consideration, regard being had to the principles which normally prevail in democratic societies. A difference of treatment in the exercise of a right laid down in the Convention must not only pursue a legitimate aim: Article 14 is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised.^{xxxii}

Clearly, the goals of the prevention, detection and investigation of terrorism and ordinary crime are legitimate, indeed, core functions of the state. In either case, a review of practices that

constitute ethnic or religious profiling must consider whether there is a reasonable relationship of proportionality between the means employed (the particular profiling practice) and the aim sought to be realised (protecting life and security against common crime and against the threat of terrorist attack). In applying the tests of necessity and proportionality, the following questions are central:

- *Probability*: valid proof of an objective statistical link between the ethnic criteria and probability of offending must be demonstrated— how *effective* are the ethnic profiling practices at hand as means of preventing crime or terrorism?
- *Proportionality*: the benefit of using the profile in terms of increasing the efficiency of law enforcement are not outweighed by the harm done through the real or perceived discriminatory impacts of the use of the profile. What *impacts* does profiling have on the individuals targeted and on society as a whole?
- *Necessity*: could the same result not be achieved through an *alternative* approach?

Anti-discrimination laws in many countries fail to explicitly include law enforcement, and in some cases national laws transposing the Race Directive do not explicitly apply to all public authorities but rather limit their scope to the provision of goods and services, leaving open the question of whether this includes law enforcement. Police laws of a number of countries do include obligations of non-discrimination, but prohibitions are often partial, and enforcement is frequently weak or lacking.^{xxxiii}

In Europe, the law is clear that, where race constitutes an “exclusive” or “decisive” basis for law enforcement action, it may constitute discrimination. It remains less settled to what extent the use of race as one of a number of factors in a profile constitutes discrimination. This is likely to depend on a context-specific determination of whether such a profile can be reasonably and objectively justified as narrowly tailored to further a legitimate purpose.^{xxxiv}

In the context of counter-terrorism, international bodies and regional courts have made clear that non-discrimination is a jus cogens norm that does not allow derogation, including in the case of terrorism and states of emergency. United Nations International Covenant on Civil and Political Rights (ICCPR) Article 4(1) states that:

In times of public emergency which threatens the life of the nation [...] States [...] may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures do not involve discrimination solely on the grounds of race, color, sex, language, religion or social origin.”

Measures derogating rights must be exceptional, temporary, situation must threaten the life of the nation; they must be proportional and necessary.^{xxxv} This has been reaffirmed since the 2001 attacks in the United States. UNCERD issued a statement on 8 March 2002 recalling that the prohibition on racial discrimination is a pre-emptory norm of international law permitting no derogation.^{xxxvi}

European regional law reiterates these standards. The Council of Europe Guidelines on human rights and the fight against terrorism^{xxxvii} make clear that “All measures taken by states to fight terrorism must ... exclude[e] any form of arbitrariness, as well as any discriminatory or racist treatment...” (Guideline II). ECRI’s General Policy Recommendation 8 on Combating Racism while Fighting Terrorism (2004) recommends that states ensure that:

- “national legislation expressly includes the right not to be subject to racial discrimination among the rights from which no derogation may be made even in time of emergency.”
- legislation and regulations “adopted in connection with the fight against terrorism are implemented at national and local levels in a manner that does not discriminate ... on grounds of actual or supposed race, color, language, religion, nationality, national or ethnic origin.”
- “no discrimination ensues from legislation and regulations—or their implementation—notably governing ... checks carried out by law enforcement officials ... and by border control personnel.”

While recognising states’ needs for additional powers in the fight against terrorism, the ECHR has taken pains to note that “[c]ontracting States may not, in the name of the struggle against espionage and terrorism, adopt whatever measures they deem appropriate.”^{xxxviii} Likewise, it has stated that “the exigencies of dealing with terrorist crime cannot justify stretching the notion of ‘reasonableness’ to the point where the essence of the safeguard secured by Article 5 para. 1 (c) ... is impaired.”^{xxxix} In assessing the states’ margin of appreciation, the Court has applied the proportionality test of the necessity of a measure and proportionality of the measure relative to its aim.^{xl} Finally, the Court has clearly stated that the domestic margin of appreciation is accompanied by a European supervision.^{xli} Some analysts argue that the trend of the last 15 years has been toward more stringent review of states’ claims to of the need for exceptional measures in the face of national security threats.^{xlii}

Ethnic Profiling in the European Fight against Terrorism

The underlying concept behind terrorist profiles is the desire to narrow down the group of “suspect” individuals likely to be involved in terrorist activities or organisations. Given finite security resources, a good profile should in theory act as a filter that will allow police and intelligence officials to focus preventive actions on people who present a real and serious threat. Governments and law enforcement authorities face enormous and valid public pressures to do all they can to prevent terror attacks, and it is entirely logical that they should seek to target their resources to greater effect. If racial profiling is to be considered as a useful tactic, the benefits must outweigh the costs. The harm to innocent people would have to be outweighed by the benefit of increasing the chance of apprehending a genuine terrorist. This mirrors the proportionality and necessity tests of discrimination set out in European case law.

Several troubling facets arise in considering the components of a cost-benefit analysis. While an identity check or a traffic stop can be an annoyance, even a humiliating experience, it is relatively unlikely to threaten a person’s livelihood or even liberty. An airport search may be a relatively minor burden, but many counter-terror measures are far more intrusive, and anti-terror laws have extended periods of pre-trial detention, facilitated extensive surveillance, created watch lists and other intrusions on privacy, and eased the way for deportations even of legal residents. In these cases, the costs of false-positives that result from profiling become potentially very high. Concern about potential costs should also increase significantly when the probable long-term nature of the current terrorist threat and counter-terrorist effort is taken into consideration as well. Both the nature and extent of the imposition in the case of terrorist profiling give cause for concern. Generally, these measures have a defensive (target hardening) or pre-emptive approach, aiming to impede or reduce the success of a terrorist attack, or to identify and dismantle terrorist networks or cells before they can strike.^{xliii} Different measures focus on different stages of the process considered to precede a terrorist attack, including: logistical support for terrorist activities and organizations; identifying of members of organizations who may at some point become active (sleeper cells); recognizing processes of radicalization; recruitment activities; planning and preparation of a specific attack; carrying out an attack. Where these measures involve profiling, they generally target individuals presumed to be Muslim or originating from a country with a Muslim majority population as well as sites (mosques, organizations, business’) connected with these same segments of the population.

Ethnic and religious profiling appears to be a widespread practice within counter-terrorism measures across Western Europe. Profiling occurs in a wide variety of techniques: a) mass controls in public places such as stop and search operations and identity checks; b) data trawling operations; c) anti-radicalization measures; d) raids on Muslim places and organizations; e) arrest and imprisonment of presumed terrorists; and f) surveillance activities.

Mass Identity Controls

Law enforcement officers throughout Europe are making use of their preventive powers to single out those they presume to be Muslims for controls in public spaces. Muslims are frequently

targeted for identity checks or searches at “sensitive” sites (such as metros, train stations, or commercial centers) or at sites where officials believe there to be a high concentration of Muslims (telephone calling centers, hallal restaurants, mosques, and specific neighborhoods).

In Germany, for example, police have been carrying out mass identity checks outside of mosques, especially after Friday prayers, for several years. By late March 2006, twenty-five to thirty mosques, including the largest and best known, had been targeted, primarily in the southern part of the country. The conduct of these checks can be intimidating: police dressed in riot gear surround the mosque and check the identity documents of every person leaving the building, in operations that take hours. Individuals without valid identification have been taken to police stations and held for several hours until their status is verified.^{xliv}

In Italy, law enforcement officials use identity check powers in mass controls of tens of thousands of Muslims and immigrants in periods of high terror alert. These checks often occur in the context of the highly publicized raids that target mosques and small Muslim and immigrant business. Others take place during large-scale control operations in public places designated as sensitive. Research carried out by the Justice Initiative indicates that persons presumed to be Muslim are specifically singled out for identity checks during these operations. For example, on 9 July 2005, following the London subway bombings, approximately 2,000 Italian police officers “fanned out across the Lombardy region, stepping up patrols around train stations, subways, commercial centres and other sensitive sites.”^{xlv} One hundred and forty two people were arrested. Police reported that most of those arrested were accused on drug, petty theft or immigration-related charges; 84 of those arrested were immigrants, 52 of whom were issued deportation orders.^{xlvi}

In the United Kingdom, Home Office data confirms that police have targeted perceived Muslims since September 11, 2001. Police stops under British anti-terrorism powers^{xlvii} of those considered “Asians” increased by 302 per cent from April 1, 2002 to March 31, 2003.^{xlviii} Researchers found that none of the 21,577 Section 44 stops and searches from 2002-2003 had resulted a conviction for a terrorism offence (Section 44(1) and (2) of the Terrorism Act 2000 allows officers, when given authorisation, to stop and search vehicles and pedestrians for articles that could be used for terrorism, whether reasonable suspicion is present or not).^{xlix} Another dramatic rise in the number of stops and searches of presumed Muslims took place following the July 7, 2005 bombings in London. Some Muslim leaders believe that young men with Islamic-style beards may be stopped more than other groups; however stops clearly extend to anyone who “appears Muslim”. One high-profile case involved a civil servant who was stopped under the Terrorism Act outside Downing Street.¹ Home Office statistics for the 2005-2006 period encompassing the July 7th London bombings have not yet been released. However, a BBC survey of 18 UK police forces found that half of those forces they had stopped more people in the three months following the bombing than they did the entire previous year.ⁱⁱ The survey also found that the numbers of Asian and Black people stopped and search in London increased twelve-fold in the two months after the bombings. According to Metropolitan Police Service figures 2,405 Asian and Black people were stopped while walking, compared with 296 the previous year.ⁱⁱⁱ Stops on vehicles under anti-terrorism powers rose by 86 percent for white drivers, by 108 percent for African-Caribbean drivers and 193 percent for Asian drivers; reportedly none of these searches has resulted in an arrest or charge related to terrorism.^{liii}

Data Mining

One of the most explicit examples of racial profiling in Europe took place in Germany from the end of 2001 until early 2003. When it became known that several of the perpetrators of the World Trade Centre terrorist attacks had lived and studied in Hamburg, German officials decided to take action to identify other potential terrorists “sleeper cells” in German. The method that they selected was a massive ‘data trawling’ or ‘dragnet control’ (*rasterfahndung*) operation.^{liv} This method involves collecting and comparing large amounts of data available on public and private databases based on a set of specific criteria—a profile.^{lv} German police collected sensitive personal data from approximately 8.3 million persons.^{lvi} The data was then “trawled” using a profile based on characteristics of members of the “Hamburg cell” including:^{lvii}

- 18 - 40 years old
- Male
- Current or former student
- Resident in the regional state (Land) the data is collected in
- Muslim
- Legal residency in Germany
- Nationality or country of birth from a list of 26 states with predominantly Muslim population or stateless person or nationality "undefined" or "unknown"

The sleeper database contained a total of almost 32,000 data entries.^{lviii} Inclusion in the database did not mean that an individual was a terrorist suspect; instead it singled a person out for further investigation in order to determine whether he or she was in fact suspicious. However, the number of 'hits' in the sleeper database was too large for police follow-up. In order to cut down the number of individuals requiring further investigation, the *Länder* and the BKA collected more information to compare against the data base. Additional data was collected from persons who had received information relevant for an attack, who had access to special resources that could be used for an attack or who had been present at potential targets for attack. The individuals singled out as possible suspects due simply to this profiling exercise were further investigated through traditional methods, ranging from being summoned for interrogation, questioning of relations and employers, to wiretapping and other forms of surveillance.^{lix} In the end, it appears that not a single terrorist suspect was identified.^{lx} The sleeper database was reportedly erased in June 2003, and the additional data in July 2003.^{lxi}

Anti-Radicalization Strategies

Another area in which explicit profiles are being developed is in “anti-radicalization,” a strategy which has emerged as a response to the appearance of the “home-grown terrorist.” As opposed to the Middle Eastern nationals who bombed the World Trade Centre in New York or the Moroccans who bombed Atocha train station in Madrid in 2003, the London Underground bombers of July 2005 were British nationals as were those arrested in August 2006 attempt. Likewise, the young man who murdered Dutch film-maker Theo Van Gogh in Amsterdam in what is perceived as Holland’s first Jihadi terrorist attack was a dual Dutch-Moroccan national.

Anti-terrorist officials across Western Europe are increasingly calling attention to European nationals who “radicalize” and become involved in terrorist organizations and activities.^{lxii}

In some locations, counter-terrorism authorities are attempting to translate the concept into a set of “indicators” that will permit the identification of persons in the process of radicalizing.^{lxiii} In practice, the effort to generate an operationally useful concept of radicalization has a dangerous tendency to conflate an individual’s religiosity or adoption of a more conservative or “fundamentalist” practice of Islam with a willingness to resort to violence. This ambiguity fuels a new form of profiling, where the primary criterion in determining suspicion appears to be the nature of religious practice.

The Netherlands has pioneered efforts to operationalize anti-radicalization efforts.^{lxiv} Dutch anti-terrorist officials have developed a set of “indicators of radicalization” designed to assist local actors, such as social workers, educators, youth workers, community development workers, district and neighbourhood organizations, municipal welfare workers, staff of public transport companies and staff of health clinics, to recognize the outward signs of radicalization.^{lxv} The objective is to equip these actors with relevant indicators that will enable them to identify persons or organizations of potential interest to the police and intelligence services.^{lxvi}

As the concept of radicalization takes hold, there is a clear risk that it will lead to profiling of Muslims across Europe. In November 2006, the head of MI5, the intelligence agency of the United Kingdom, stated that:

We need to be alert to attempts to radicalise and indoctrinate our youth and to seek to counter it. Radicalising elements within communities are trying to exploit grievances for terrorist purposes; it is the youth who are being actively targeted, groomed, radicalised and set on a path that frighteningly quickly could end in their involvement in mass murder of their fellow UK citizens, or their early death in a suicide attack or on a foreign battlefield.^{lxvii}

In a welcome note of caution, she went on to say that a cautious approach is needed based in an understanding of the “differences between non-Western and Western life-styles” that should not confuse fundamentalism with terrorism or treat people with suspicion because of their religion.

Raids of Businesses, Places of Worship, and Homes

In counter-terrorism efforts as in the policing of common crime, law enforcement officials conduct preventive raids in a manner that frequently appear focused on Muslim faith rather than on concrete evidence of involvement in terrorism. Large numbers of Muslims and immigrants are being subjected to aggressive and highly publicized raids aimed at disrupting the support base and “breeding ground” for terrorism. These raids single out Muslim- and immigrant-owned businesses, Muslim prayer halls, as well as the homes and offices of Muslims. In a limited number of cases, there has been a solid evidentiary basis for the action, but the overwhelming majority of cases appear based on stereotypes linking Muslims or immigrants to terrorism.

Raids have led to arrests and deportations and have damaged immigrants’ businesses. Their results in terms of preventing terrorism are unclear. In at least some cases they appear primarily oriented to appeal to the broader public and reflect a desire to be seen to be tough on terrorism

and the communities from which terrorists are perceived to originate. The collateral damage of this approach can be considerable. The high levels of publicity surrounding many raids have fed public fears and broad social stereotypes linking Muslims and immigrants with terrorism. In responding to public expectations in this manner, official actions reflect and reinforce public prejudice and stigmatise entire communities. A basic principle should be that religion, ethnicity and nationality should not be determinant factors in selecting operational targets. Whether or not a raid is racial profiling depends on whether or not there is a specific evidential basis for the raid, arising out of an individualised investigation. Where a raid is based on specific probative information leading officials to suspect a particular individual for supporting or promoting terrorist activities, this is intelligence-led policing, not racial profiling. Law enforcement authorities should narrow their focus and refine their understanding of pre-attack behaviours in guiding their use of tactics that are intrusive and visible.

In France, raids on Muslim-owned businesses and Mosques are coordinated by “regional centres to combat radical Islam” (*pôles régionaux de lutte contre l’Islam radical*) as part of a strategy to monitor and disrupt the “support base” of Islamist terrorist organizations.^{lxxviii} The “regional centres to combat radical Islam” were established in each of France’s 22 metropolitan regions in 2005 by order of the French Ministry of the Interior. Each centre is co-ordinated by a representative of the French General Secret Services (Renseignements Généraux / RG) and brings together representatives of a wide range of departments including: police, public hygiene, public safety, revenue and taxation, and labour. The regional centres are mandated to monitor, disrupt and cut off the support base of “radical Islam” in France. In addition to surveillance activities,^{lxxix} they are mandated to use administrative powers to impede and disturb businesses where “radical Islamists” meet or that are suspected is providing financial support to “radical Islamist networks”.^{lxxx} Common targets include fast food restaurants, cafes, call centres, bookstores, security companies and clothing stores. According to official figures, in 2005 these regional centres carried out checks of 47 Mosques and prayer halls; 473 businesses; and 85 cafes and phone centres. These raids resulted in 276 judicial penalties, and 310 administrative penalties, 55 of which were executed.^{lxxxi} In 2005, in the greater Paris region (Ile de France) alone, 88 raids were carried out involving 1,173 people, 185 of whom were taken into custody and eight prosecuted.^{lxxxii} Activities increased in 2006, with 93 raids carried out between January 1 and May 15, 2006.^{lxxxiii} As their name demonstrates, the regional centres to combat radical Islam make clear in their name that that their job is to target “radical Islam”. Any place where officials believe “radical Islam” may be supported or spread becomes a legitimate site for surveillance and “disturbance”. Any Muslim owned or Muslim managed businesses that the authorities consider “radical” can be singled out for raids and controls beyond normal administrative and regulatory checks.^{lxxxiv} The concept of “radical Islam” is not defined. Muslim organizations believe that: “In reality the notion of radical Islam is very broad. Praying, wearing a beard or a veil suffice to define you as radical. People are discriminated against because they are Muslims; officials check their businesses because they are Muslims.”^{lxxxv}

While more sporadic, raids are also a key component of Italian “preventive anti-terrorism.” On 10 August 2006, immediately after British officials announced the foiled terror plot, Italian police conducted a massive nation-wide raid of Mosques and informal prayer halls, internet cafes, money-transfer offices and long-distance phone centres.^{lxxxvi} The Italian Interior Ministry announced that the operations targeted “Islamic gathering places” and that this was “an

extraordinary operation that followed the British anti-terror operation.^{lxxvii} The Prime Minister's office announced that police had raided a total of 1,272 places and checked the identification of 4,178 individuals with the following results: 114 individuals were issued deportation orders; 103 fines of businesses for administrative irregularities; 111 people were reported for various crimes; and 40 individuals were arrested—28 for immigration violations and twelve for unspecified "crimes against property".^{lxxviii} Dacia Valent, spokeswoman of Italy's Islamic Anti-Defamation League, noted that "[m]ore than 4,000 people were stopped and humiliated to allow police to arrest twelve chicken thieves and 28 clandestine immigrants."^{lxxix}

German police also conduct regular, and often massive, raids of mosques, Muslim organisations and businesses. German officials provide a case-specific evidentiary basis for different raids, linking them to ongoing investigations into specific persons or organizations suspected of involvement in terrorist activities or of supporting such activities. However, the factual basis and the selection of a highly intrusive raid as the appropriate tactic raise valid questions as to whether stereotypes linking the practice of Islam (or certain streams of Islamic practice) to terrorism influence the selection of targets and tactics, and cross the line from intelligence-based law enforcement to profiling. Dr. Nadeem Elyas of the Central Council for Muslims in Germany,^{lxxx} police have "raided 300 mosques, searched 2,000 offices and apartments, and interrogated thousands of Muslims, yet little evidence has been made public to suggest that these invasive measures have yielded any information relating to terrorist activities."^{lxxxi}

Arrest and Imprisonment

A particularly disturbing dynamic, because of the harm done to individuals who are targeted, is the arrest and long- and short-term imprisonment of persons during investigations of terrorist activities. These arrests and investigations are often based on weak circumstantial evidence, and appears to rely on stereotypes concerning their religious practice, country of origin or ethnicity. In these cases, religious beliefs, ethnicity or nationality stand in as proxies for relevant and probative evidence to target Muslims for arrests, searches, and short and long-term imprisonment. This form of profiling is being used to cast a *prima facie* presumption of guilt upon individuals during criminal investigations into terrorist activities and organizations. Individuals therefore find themselves in the extremely difficult, if not nearly impossible, situation of proving their innocence when the case against them relies heavily not on what they did, but on who they are and generalizations about their religion.

A core element of French prevention of terrorism strategy lies in efforts to identify and neutralise potential terrorists before they can plan an attack. The majority of terrorist suspects in France are arrested, detained and sentenced based on a criminal law provision penalising participation in a group or association formed for the purpose of preparing a terrorist act (AMT).^{lxxxii} Official statistics published in September 2005 indicate that of a total of 358 individuals held in prison at that time for terrorist offences, 300 were charged under the AMT provision.^{lxxxiii} Acting under this provision, the authorities may arrest, detain and charge an individual based on their alleged participation in *preparatory* acts; proof of actual involvement in the planning of a terrorist act or even a precise plan for the execution of a terrorist act is unnecessary.^{lxxxiv} Defence lawyers and human rights organizations have been highly critical of the AMT provision itself and especially

of the weak and tenuous evidence relied upon in prosecutions. The International Federation of Human Rights Leagues (FIDH) conducted in-depth research on AMT detentions and observed that:

What is striking about the cases we have enquired into is the paucity of real evidence about intended acts of terrorism, coupled with questionably relevant evidence as far as large numbers, possibly the majority, of those accused are concerned. [...] [O]ur reading of a considerable number of case papers confirms what so many defence lawyers have told us: that the evidence against many of their clients at the time they are arrested is so insubstantial as not to merit arrest and detention at all, let alone prosecution for terrorist activities.^{lxxxv}

Since September 11th, Italian police have arrested and detained innocent men from countries with a majority Muslim population (Pakistan, Afghanistan, Morocco, Egypt) on charges of terrorist related crimes. Authorities widely disseminate news of arrests of “terror suspects” to the Italian media as indicative of success in the fight against terrorism.^{lxxxvi} Since September 11, 2001, there have been over 200 highly publicised arrests of migrants.^{lxxxvii} Only two have resulted in findings of guilt for [terrorist related crimes].^{lxxxviii} In the overwhelming majority of cases, the individuals are quietly released after some time in detention. The cases are revealed as “errors”, and the individuals concerned found to be not terrorists but ordinary immigrants.^{lxxxix} Most evidence suggests that these arrests are of little use to counter-terror efforts; most detainees are released without charge. Media coverage of arrests is extensive, while releases generally warrant little attention. Each arrest reinforces generalizations drawing a parallel between immigrants, fanatics and potential terrorists.

British anti-discrimination advocates have noted the discrepancy between the rate of arrests and convictions under anti-terrorism laws, and the discrepancy between the religious background of those arrested and those convicted, and raises serious concerns about excessive and discriminatory use of arrest powers against Muslims.^{xc} Additional concerns are raised by the media coverage of terror arrests, which is typically extensive, versus the lack of coverage when detainees are subsequently released without charge. The discrepancy in the information reaching the public leaves the impression that the British criminal justice system is successfully prosecuting Muslim terrorists, although in reality most of those Muslims who are arrested on terrorism allegations are never charged with any terrorism offence.^{xc1}

Monitoring of Muslim Institutions and Organizations

Intelligence services across Western Europe are monitoring Muslim places of worship, organizations and associations. Research in France, Germany, Italy and the Netherlands indicates that each of these countries relies heavily on surveillance in efforts to prevent Jihadi terrorism. In some cases, a mosque will come under surveillance during a specific investigation in which evidence leads officials to a particular mosque. More commonly, intelligence and police officials keep a close watch on any Mosques or organizations they believe are “radical” or are sites where radicalization may be spread. Here, as discussed in the section on radicalization, the concept of “radical” proves slippery, often shifting from a narrow focus on support for violence and terror to scrutinize all conservative practices of Islam.

The monitoring of Muslim places does not necessarily constitute discriminatory ethnic profiling. In some cases, monitoring is based on specific intelligence and is entirely warranted, as was demonstrably the case in the seizure of materials and arrests that followed raids on London Mosques in Finsbury Park.^{xcii} If officials have information about dangerous or illegal activities; or hear that sermons are inciting violence, hatred or discrimination; or where they suspect Jihadi recruitment is taking place; or hear that radical persons are attempting to take over a Mosque; subsequent monitoring does not amount to profiling.

Monitoring or surveillance risks profiling when it is based on stereotypes categorising certain groups of individuals as potentially dangerous based on their religious beliefs, ethnicity or national origin. When mosques or organizations are targeted for surveillance due to the national origin of their members, this is profiling. When organizations are monitored because they are Muslim, this is profiling. It is also profiling if a Mosque is monitored simply because it is Salafist or practices another controversial stream of Islam. While there are Salafist streams that do promote terror and violence, it is an over-generalization to place all Salafi Muslims in this category, as most have no connection to terrorist organizations and activities.

It is often unclear whether particular surveillance practices are intelligence-based or involve racial profiling. Intelligence officials do not generally share information. The decision to monitor a place may often be taken in a grey area between intelligence-based and stereotyping. Evidence supports the argument that countries are crossing the line from intelligence-based monitoring into profiling.

In the Netherlands, Dutch intelligence services also use religion as a basis for monitoring large numbers of Muslim organizations. Monitoring is conducted on the basis of generalizations about the type of Islam that groups practice, promote or support, rather than specific information about activities in a particular Mosque or organization. The surveillance covers streams of Islam that are held to be dangerous even when non-violent, on the theory that they may be hotbeds of terrorist radicalization. Thus, all Muslims practicing certain forms of orthodox Islam are classified as potentially threatening and warrant monitoring.^{xciii}

The Counter-Terrorism Co-ordinator explains the Dutch approach of targeting “hotbeds of radicalization” in a recently issued guide for local authorities:

A hotbed of radicalism is an organisation, group or place that serves as a breeding ground for activities and views that are instrumental in radicalizing individuals and can ultimately result in terrorist activities. [...]

Hotbeds of radicalism can also serve as an ideological breeding ground for extremists. They can function as a first step on a path that may lead to violence. This danger exists in particular in the case of organizations that advocate extreme, intolerant isolationism or promote an intolerant ‘us vs. them’ mentality”... Intervention in hotbeds of radicalism involves the coordinated use of existing powers and instruments of central and local government under the direction of the National Coordinator for Counterterrorism Organisations. [...] The aim of the approach is to make clear [...] that activities of a radical nature will not be tolerated and that the authorities are monitoring activities closely.^{xciv}

It is therefore not specific evidence linking an organization to terrorist activities that qualifies it as dangerous. Suspicion is instead cast on it due to the fact that it practices a form of Islam, albeit peaceful, that the Dutch authorities consider potentially dangerous.

The French general intelligence services (RG) have monitored Muslim associations for several decades predating September 11th, with increasing intensity following bombings by Algerian groups in France in 1995.^{xcv} More intrusive surveillance is generally reserved for situations indicated as potentially ‘dangerous’ by specific intelligence, and falls well within the parameters of appropriate intelligence-based law enforcement. However, some surveillance appears to cross the boundary and reflects judgements of “danger” that rely on overly-broad schema that blur conservative Muslim practices with radical tendencies and terrorism. This is especially the case since the addition of “regional centres to combat radical Islam” which make no secret of targeting a segment of the population based on their religious practices.^{xcvi} Despite this already intense level of monitoring and extensive information about Muslim places of worship, organizations and individuals, in January 2005, the then French Minister of the Interior Dominique de Villepin announced the creation of new “regional centres to combat radical Islam” (*pôles régionaux de lutte contre l'Islam radical*), headed by the RG. With the opening of these centres, Muslims are specifically and publicly targeted by surveillance activities devoted to “radical” members within their communities. This appears highly likely to extend RG monitoring activities to an ever growing segment of the Muslim population

The Effectiveness and Impact of Ethnic Profiling in the Fight against Terrorism

In a context of widespread racial and ethnic discrimination and growing discrimination against Muslims in Europe (discussed further below) the use of ethnic origin and religion as a criterion in identifying terrorists imposes significant costs as it reinforces racist perceptions that Muslims are terrorists.

The need to counter terrorism inevitably gives rise to debates about appropriate “balance” between fundamental rights and states’ ability to respond to national security threats. However, profiling involves highly sensitive grounds of race, ethnic or national origin, nationality, religion,^{xcvii} and requires consideration of the non-derogable nature of anti-discrimination standards – including in contexts in which terrorist threats are faced. In a digest of jurisprudence on the protection of human rights while countering terrorism, the Office of the High Commissioner for Human Rights (UNOHCHR) notes that:

The principle of non-discrimination must always be respected and special effort made to safeguard the rights of vulnerable groups. Counter-terrorism measures targeting specific ethnic or religious groups are contrary to human rights and would carry the additional risk of an upsurge of discrimination and racism.^{xcviii}

These factors weigh heavily in the equation when judging reasonableness and proportionality of profiling strategies in counter-terrorism efforts. This means that the assessment of necessity and proportionality needs to demonstrate very clearly that the ethnic profiling is effective, has few negative effects and that no adequate alternatives exist.

Ethnicity and nationality are not spurious when it comes to identifying suspected terrorists and, by definition, jihadi terrorism is perpetrated by Muslims. Neither the religion nor the ethnic origin can truly be said to be irrelevant to the equation, yet what is their power to predict the likelihood of offending? Predictability underlies efficiency and, if profiling is to be a useful and legitimate tool of law enforcement, a profile including ethnicity and religion must be demonstrably efficient, achieving results that could not be produced without the use of these criteria.

The fact that a larger percentage of people of a certain ethnic or national origin commit a certain kind of offence than members of other groups does not mean that an individual member of the group is likely to be a criminal. Thus, it appears to be simultaneously true that most jihadi terrorists in Europe are Muslims of North African or Pakistani descent, and that 99.99 percent of Muslims of Maghrebi or Pakistani descent are not terrorists.^{xcix} The “vast majority of persons who appear Arab or Muslim—probably well over 99.9 percent—have no involvement with terrorism.”^c Furthermore, even if it is true that the majority of jihadi terrorists fit this general description, we also know of outliers—black British and white Belgian converts to Islam, for example, or the Somalis and Ethiopians arrested in the UK for the failed bomb attempt on July 21, 2005—who do not. European rights experts say that there is inadequate evidence to

demonstrate a statistical relationship between ethnicity and a pattern of individuals in Europe who commits acts of terrorism.

Even if one could develop a consistent and factually grounded profile of a terrorist, any profile based in part on race cannot be reliably applied, given the outsized prominence of physical appearance in human perception. The social psychology of race and ethnicity indicates that, because of their visibility, these attributes are prone to be assigned greater weight in practice than the other elements of the profile, and thus distort the profile. Race and ethnicity are so visible as to make a profile inaccurate—they are thus inefficient. Hence, they should be prohibited as a preventive mechanism to ensure they are not overused.

Even where a statistically proven correlation between crime and race/ethnicity exists, the European Court appears to suggest that this would not justify different treatment such as profiling.^{ci} The EU Network of Independent Experts on Fundamental Rights agreed:

The consequences of treating individuals similarly situated differently according to their supposed race or ethnicity [are so] far-reaching ... in creating divisiveness and resentment, and ... in turn reinforcing such stereotypical associations between crime and ethnicity, that differential treatment on this ground should in principle be considered unlawful under any circumstances.^{cii}

It is clear that a fundamental problem of ethnic profiles is that they are both over-inclusive and under-inclusive. Over-inclusive in that many, indeed in some cases the vast majority, of the people who fall into the category are entirely innocent; and under-inclusive as there are terrorists and many other types of criminal who do not fit the profile and who would escape attention if the profile were to be strictly applied. While over-inclusion imposes unnecessary burdens on “false positives”—persons who are innocent but match the profile—under-inclusion may divert police attention from actual threats that lie beyond the prescribed criteria. Indeed, it has been reported that, prior to the July 2005 attacks on the London public transport system, the leader of the bombers “had come to the attention of the intelligence services as an associate of other men who were suspected of involvement in a terrorist bomb plot. But he was not pursued because he did not tick enough of the boxes in the pre-July profile of the terror suspect.”^{ciii} The most authoritative report to date on the 7/7 London bombings concludes that “there is not a consistent profile to help identify who may be vulnerable to radicalisation.”^{civ}

Additional problems with profiles are predictability and evasion. The more predictable law enforcement profiling becomes, the easier it is for perpetrators to adapt to circumvent the profile. A terrorist profile may become a handicap in as much as its components are publicly-known (which is common) thus enabling terrorists to recruit individuals who do not fit the profile and have a greater chance of escaping detection. In February 2006, U.S. President Bush announced that a planned attack on Los Angeles had been averted. “Rather than use Arab hijackers,” Bush said, “Khalid Shaikh Mohammed sought out young men from Southeast Asia whom he believed would not arouse as much suspicion.”^{cv}

Profiling as it is currently used fails to take account of the fact that the very problem it seeks to address is dynamic, and evolves in relation to policing and law enforcement tactics among other things. Thus terrorists seek to evade profiles and other law enforcement strategies through

substitution. Substitution can take place with people or tactics. That is, in response to profiling, terrorist organizations “will either (i) recruit more individuals from non-profiled groups, thereby expanding the overall pool of potential terrorists, or (ii) substitute different types of terrorist attacks that are more immune to profiling and yet more devastating in terms of deaths and injuries.”^{cvi} There is some evidence that substitution is taking place in Europe.^{cvi}

In addition to people, tactics or modes of attack may also be substituted. The history of counter-terrorism provides a cautionary tale. Installation of metal detectors in airports in 1973 reduced the number and rate of airplane hijackings worldwide, but resulted in a sharp and proportionally larger increase in bombings, assassinations and hostage-taking incidents.^{cvi} There is no empirical evidence that racial profiling would be any different – i.e., that it would not be counterproductive in resulting in detrimental substitutions and increased terrorist attacks.

The Effectiveness of Terrorist Profiling Strategies in Europe

Reviewing the profiling practices examined in this report, there is scant evidence of their effectiveness in detecting terrorist crimes and arresting terrorists.

Mass Identity Controls

Our research has not found any evidence that police use of identity check and stop and search powers have had any success in detecting individuals involved in terrorist activities. Security officials and official statements suggest that there is little or no expectation that the police would be lucky enough to detect a terrorist through an identity check.^{cix} Rather, these activities serve several different functions: they may be broad intelligence-gathering exercises; they may in fact seek a demonstration effect, a visible show by the authorities of the seriousness of their counter-terror efforts; finally, there are collateral benefits, primarily in immigration enforcement outcomes of identity checks and the use of stop and search. Counter-terror authorities understand and agree with this analysis.

Data Mining

The most explicit profiling also appears to be the least successful. Data mining efforts, while consuming enormous resources, do appear to have produced a single useful lead or arrest. The result was exactly the same in the USA, the other country that invested in a massive profile-based targeting exercise after 9/11.^{cx}

Raids of Businesses, Places of Worship and Homes

Similar debates about productivity and purpose have arisen around the use and impacts of police raids. According to French officials, raids do not necessarily uncover acts of violence in preparation, but function to deter any such activity in the first place. The collateral damage imposed by this approach is recognized and accepted. “One cannot quite imagine Anglo-Saxon countries imitating our tactic of harassment, sometimes without real elements of proof,” Alain Chouet, former head of France's external-intelligence agency, told *Le Figaro*. “Sometimes it's a bit borderline, but it upsets the networks, prevents them from taking action.”^{cx}

Assessing prevention efforts always poses the problem of how to measure something that did not happen. How are we to know if in fact an act of terrorism might have taken place if Italian or French officials had not raided Muslims homes and businesses? It is questionable how targeted on probable perpetrators and their networks these aggressive raids in fact are. The high levels of publicity accompanying many of these actions raise suspicions about intentions, and many skeptics firmly believe that raids, like mass ID checks and other highly visible counter-terror actions are undertaken more for their impact on public opinion than anything else. Intelligence-based raids should produce outcomes in arrests and convictions on terrorism charges and seizures of evidence for trials. While this certainly is the result in some cases, many more casts a wide net, are clearly based primarily on religious belonging or practice, and produce only fear, stigmatization, personal and business losses.

Anti-Radicalization Strategies

Radicalization as the conceptual basis for attempts to detect “home-grown terrorist” is a broad concept. There are many positive aspects of this discussion, and its encouragement of greater concern with the lack of educational, housing and employment opportunities in many of Europe’s poor Muslim communities are valid and useful. When used as an operational tool, however, it poses a serious risk of equating large numbers of disenchanting and angry young Muslims with an extremely small group of individuals who, for whatever reason, decide to commit acts of gross brutality.

What is striking in discussions of radicalization is the absence of any analysis or discussion of the manner in which national counter-terrorism and law enforcement strategies and operational tactics may contribute to and serve to validate the grievances and exclusion experienced by Europe’s Muslim communities. Even as the UK government undertook a series of consultations with British Muslims, analysts following the process noted that:

It is however astonishing that neither the government, not the ISC committee, acknowledged the potentially damaging effect that counter terrorism measures themselves can have in contributing to ‘radicalisation’ or in inhibiting community cooperation in identifying suspects.^{cxii}

Terrorism scholars note that “one major component of the radical subjectivity was the feeling of humiliation,”^{cxiii} and that “joining a terrorist group ultimately revolves around a desire for revenge and that this, and the willingness to seek it in violent ways, are tied to feelings of self-worth—shame, humiliation, loss of face—retribution and deterrence.”^{cxiv} While experts discuss the impact of foreign policy and the war in Iraq—which is cited in martyrdom videos of the British July 7th bombers as underlying their choice^{cxv}—there is too little attention paid to the negative impacts of aggressive law enforcement in these same communities, even though these could be relatively more easily changed to improve Muslims’ and other minorities’ experience of contact with police.

Arrest and Imprisonment

Important arrests of terrorist have been made across Europe,^{cxvi} and the region is without doubt safer as a result. There is reason for concern, however, that the number of people initially arrested is far greater than the number who ultimately face trial and that the burden of the disproportion falls almost entirely on Muslims.

In the aftermath of September 11, more than 600 people were arrested under anti-terrorism legislation in the UK, almost all of them Muslims. In mid-2004 less than 100 of those arrested have been charged with terrorism offences and only 15 people have been convicted of such crimes.^{cxvii} A study of 11 of these convictions showed that only three involved Muslims.^{cxviii} Some 200 of those arrested have been charged with offences that are not related to terrorism, while more than half have been released without charge.^{cxix} As of August 2004, ten men, all of whom are Muslim, remained detained under the Anti-terrorism, Crime and Security Act 2001, which allows for indefinite detention without charge of foreigners who are suspected of involvement in terrorism but who cannot be deported from the country.^{cxx}

The one area in which profiling practices appear to be relatively productive is in producing immigration enforcement outcomes. It does not appear in Europe that law enforcement officials have sought to use immigration law and powers as a primary tool in the counter-terrorist efforts as was the case in the United States. However, in the course of actions using a variety of powers—to verify IDs, stop and search, explicit counter-terrorism powers, or simply under municipal health ordinances—the focus on people who appear to be of Arab ethnicity or Muslim means that minority and immigrant communities have been systematically targeted and persons without papers picked up quite frequently. Immigration enforcement is not the stated objective of these actions. Yet, authorities announce arrests, often without distinguishing between detentions on immigration violations and those for criminal or terror offences. A constant equation is made between foreigners and immigrants in many countries, leaving the public with the impression that most immigrants, and certainly most Muslim immigrants, are potential terrorists.

The Impact of Profiling on Europe’s Muslim Communities

Ethnic and religious profiling exacts a high toll on the individuals, groups and communities that are singled out for differential treatment; it also imposes broader social costs, aggravating tensions between different groups, legitimizing discrimination and racism, and impinging on the human rights protection of all citizens. The ethnic and religious profiling measures undertaken in the course of current European terrorist prevention strategies involve a broad range of serious intrusions into fundamental rights including freedom from unfair arrest and detention; freedom of religion; freedom from interference in one’s private and family life; freedom of movement; and freedom of association. Any measures that single out individuals for differential treatment, and that interfere with basic freedoms and cast suspicion on persons as ‘potentially dangerous’ on the basis of their origin or belief cause immeasurable harm.

The public and sensational manner that law enforcement officials often carry out anti-terrorist operations generates profound public stigma. Police announce that identity checks, raids, interrogations and surveillance measures targeting Muslims are aimed at gaining more information about dangerous extremists and terrorists, even where these are fishing expeditions or have purely “preventive” aims (intimidation, harassment, a display of the presence of the state, etc.). Sometimes large-scale operations targeting Muslim communities are clearly seeking political advantage of public stereotypes associating Muslims with potential terrorists. The operations are designed to send the message to the public that ‘the enemies’ are being watched

and weeded out of society; that the state is doing a good job in protecting its innocent majority citizens from the terrorist threat. The fact that most of these actions do not demonstrably produce any benefit and may actually have a negative impact on the ability to prevent terrorism is irrelevant. The emphasis is on the short-term political gain obtained through highly visible actions.

Large numbers of people are directly and indirectly affected by ethnic profiling. One survey in the UK found that 32 percent of Muslims report being subjected to discrimination at airports. A Home Office survey found that 5 percent of British Muslims had been stopped and searched by police, 12 percent had a friend or family members stopped, and 42 percent felt they had been the object of suspicion.^{cxxxi} These encounters can be frightening and are often deeply humiliating. Moroccan immigrants in Spain report being called “moro de mierda” by police during identity checks, and having their trousers pulled down in public in the street for searches.^{cxxii} In Germany, a Muslim leader noted that “It is humiliating to have policemen with machine guns checking identification in a prayer space. [E]ven ten-year olds... Is that the sort of image that is supposed to make children feel at home here?”^{cxxiii}

Less evident, but equally damaging is the deep sense of fear that the use of profiling in counter-terrorist action has instilled amongst members of Muslim communities. A large number of Muslims—citizens, long-term residents, recent immigrants or illegal immigrants across Europe—believe that they could be next. Many practicing Muslims believe that they are already subject to surveillance measures, such as wiretapping, and that if they are unlucky they could at any time find themselves targeted for more drastic measures, such as raids, arrests, detention and deportation. In the interviews with Muslim organizations and mosque authorities for this report, we found high and widespread fear among the interviewees. Many individuals were very careful about what they said on the telephone, and unwilling to be quoted for fear of repercussions.^{cxxiv} In Italy, where few immigrants are Italian citizens, many Muslim organizations were afraid to speak at all.

One of the most serious impacts of ethnic profiling is its contribution to stigmatizing members of targeted ethnic, religious or national groups. When the authorities single out members of certain groups for control and surveillance, and particularly when these actions are broadcast to the media, the message is sent that the entire ethnic or religious group presents a danger to society. Negative stereotypes are fostered and reinforced, contributing to existing social and political tendencies toward racism and xenophobia.

This issue has been extensively documented in Italy.^{cxxv} Public opinion views Muslims as “alien” to Italian society and as “potential terrorists” who undermine the security of the country.^{cxxvi} A 2003 survey found that 56 percent of Italians think that Muslims have “cruel and barbaric” laws; 47 percent consider all Muslims to be “religious fundamentalists”, and 33 percent are convinced that Muslims are “invading the country.”^{cxxvii} These intolerant attitudes also appear frequently in public debate around immigration and Muslims,^{cxxviii} and are commonly articulated by political elites.

Most government authorities across Europe have taken pains to issue public statements emphasizing that all Muslims are not terrorists, that those supporting terrorism are a narrow

minority of the population. These remarks are directly undermined when police and intelligence officials engage in ethnic and religious profiling that evidently, and often publicly, singles out Muslims for extra attention and differential treatment.

Ethnic and religious profiling has had a particularly damaging impact on police relations with the targeted communities. Often counter-terrorist tactics only aggravate already troubled police-community relations. In the United Kingdom, an official study published several months before September 11th, 2001, found that two thirds of Muslim organizations surveyed reported unfair attitudes and behavior by police toward Muslims.^{cxxxix} Since 9-11, the situation has deteriorated. The Islamic Human Rights Commission (IHR) has expressed concern that disproportionate targeting of Muslims following 9-11 has contributed to further eroding confidence of Muslims in police practice and impartiality, and has raised the concern that current policies may drive moderate Muslims into the arms of extremists.^{cxxx} Measures targeting Muslims who have nothing to do with terrorism are “extremely counterproductive” because they alienate “the very community that police need to help and support the fight against terror.”^{cxxxi} The London Metropolitan Police has itself recognized that the increase in the use of search and arrest powers against certain groups has had a “hugely negative impact” on community relations and has increased “the level of distrust” of the police.^{cxxxii} In July 2004, the British government announced plans to review the use of such powers and to take measures aimed at building confidence in police among groups perceived to be unfairly treated by it.^{cxxxiii}

Conclusion

Recently, the UN Rapporteur on Human Rights and Terrorism has concluded that:

Terrorist profiling practices that are based on ‘race’ are incompatible with human rights. Profiling based on ethnicity, national origin, and/or religion involves differential treatment of comparable groups of people. Such differential treatment is only compatible with the principle of non-discrimination if it is a proportional means of countering terrorism. Profiling practices based on ethnicity, national origin and/or religion regularly fail to meet this demanding proportionality requirement: not only are they unsuitable means of identifying potential terrorists, but they also entail considerable negative consequences that may render these measures counterproductive in the fight against terrorism.^{cxixiv}

The multi-country evidence of ethnic profiling in counter-terrorism activities presented in these written comments lend validity to the Special Rapporteur’s conclusion. Police officers across the EU Member States routinely use generalizations about race, ethnicity, religion or national origin in targeting suspicion and deciding who to pursue for an identity check, a search, a raid, and so on. In some cases, profiling is an explicit strategy, as in the *rasterfahndung* or some approaches to anti-radicalization. In others, it is the result of a pattern of disproportionate attention to all members of a certain group based on the stereotype that they have greater propensity to commit certain types of crimes. In some cases, police attention does appear to originate in intelligence, but the specificity and reliability of the intelligence is at times grossly inadequate to the actions undertaken.

As police continue to profile different ethnicities across Europe, they are, wittingly or not, contributing to a growing sense of marginalization and alienation of minority and immigrant communities. Profiling does not only violate individuals’ basic rights and freedoms; it also instills insecurity amongst all members of the targeted communities. Additionally, profiling stigmatizes those communities in the public eye, legitimizing and fostering broader acts of violence and discrimination against them, straining inter-ethnic relations and social cohesion.

For the police themselves, profiling feeds and aggravates existing mistrust and consequent hostility and lack of cooperation in fighting crime and terrorism among the very communities where support is needed. The sense of victimization has fed into major urban unrest. Many believe profiling is also fuelling the sense of victimization and humiliation that have been identified as key factors in the radicalization of young Muslims throughout Europe. As long as ethnic profiling is not recognized as a problem, has no clearly agreed-on definition, and is not addressed in practice, these damaging impacts will only continue and deepen.

Beyond the damage done to police-minority relations, strong evidence suggests that profiling does not improve, and more likely reduces police efficiency. Numerous problems obstruct the effectiveness of profiling as a tool in counter-terrorism measures, whatever law enforcement method is used – stop and search, identity checks, data trawling, anti-radicalization, raids, arrests and detention, or surveillance. While quantitative data is limited, that which exists confirms that intelligence is key, and the first line of defense in preventing terrorist acts. The evidence also suggests that efforts to foster trust and information networks in at-risk communities can also

produce vital results in detection, detention or obtaining actionable intelligence. Indeed, there is considerable reason to believe that profiling practices are not only ineffective, but may also be directly counter-productive, reducing community trust in and cooperation with the police and even creating a sense of anger and resentment that may lead moderate people towards extremist views and actions. Racism and discrimination generate humiliation, rage, a sense of injustice and other feelings that have been identified by experts as factors in the process of radicalization.

When the considerable harms caused by measures that rely on racial profiling are weighed against their limited success in actually preventing terrorism, there can be little doubt that they are a disproportionate and therefore inappropriate tool by international human rights standards. They clearly fall foul of the principle of non-discrimination, which must be respected even in times of terrorist threats.

In addition, specific measures also fall foul of other human rights, such as the right to liberty and security, including freedom from arbitrary detention and imprisonment; the right to a fair trial; respect for private and family life, home and correspondence; freedom of thought, conscience and religion; freedom of expression; and freedom of assembly and association. In order for interferences with these various rights to be justified, they would have to meet a proportionality test that is equally, if not more, strict than that applied in the case of discrimination.^{cxxxv} They could evidently not meet a stricter test that would require that the effectiveness be shown to be even greater as compared to the harms.

Basic common sense also speaks to the need to avoid the generation of social tensions likely to alienate minority communities and impede the work of law enforcement authorities. The inappropriate nature of racial profiling measures is all the more striking when we consider that less harmful alternatives exist that have far greater chances of successfully preventing terrorism.^{cxxxvi}

The threat of terrorist violence, like the everyday reality of ordinary crime, is genuine and must be addressed. The challenge is to do so in ways which enhance, rather than undermine, human security and individual rights. Ethnic profiling strikes at the heart of the social compact linking law enforcement to the communities they serve. It is part of the problem; we must find other solutions. The alternative to profiling is not doing nothing—or simply succumbing to chance.

In order to make clear that ethnic profiling has no place in a Europe that respects human rights, member states should adopt specific legislative provisions that ban discriminatory practices by law enforcement, including but not limited to ethnic profiling. National legislation and/or operational guidelines on criteria for stops and searches should be brought into line with the standard of the European Code of Police Ethics that “police investigations shall, as a minimum, be based upon reasonable suspicion of an actual or possible offence or crime.”^{cxxxvii} At both national and regional level, clear data protection standards should assure that processing of sensitive data in criminal and terrorist investigations must be justified by a showing of demonstrable need and no reasonable alternative. The EU—through the Council, the Commission and the Parliament—should call on member states to adopt the appropriate measures.

For too long, official Europe has ignored problems of racism and xenophobia. Cognitive denial has been eased by the absence of data or, indeed, of any systematic monitoring which takes into account racial and ethnic differences. Thanks to major advances in European law in recent years—most significantly, the adoption of the EU Race Directive—this policy of data-starved conscious avoidance is coming to an end. The European Commission, in particular, has recently sponsored major studies involving the use of ethnic data to monitor discriminatory patterns. And yet, concerns about the potential misuse of ethnic data continue to impede understanding—of the need for data in order to grasp the scope of the problems to be tackled, and of the potential to do so without compromising privacy and data protection norms. Nowhere is the need for data greater than in the field of criminal justice—precisely where racist myths have proven so powerful. Monitoring of law enforcement activity with respect to ethnic minority communities is essential to foster accountability and provide a common foundation of knowledge on which to build policy.

In fashioning remedies for, and alternatives to, ethnic profiling, governments should work closely with minority representatives and human rights groups. Initiatives specifically in the field of counter-terrorism are demonstrating the possibility for diverse constituencies to collaborate with law enforcement in documenting stops and searches, disseminating information, and fostering community policing initiatives that build trust and enhance security.^{cxxxviii} In particular, it is crucial to build partnerships between police and Muslim communities. Reliance on an “expertise model” of counter-terrorist policing ignores the extensive resources within communities that have already supported counter-terror efforts. The challenges inherent in building partnerships are significant; there is little history of Muslim community-police cooperation in many European countries, and outright hostility among some. These will have to be addressed head-on. To this end, complaints mechanisms should also be strengthened; and complaints of police discrimination must be treated with utmost seriousness by specialized mechanisms, judicial authorities and the police themselves.

ENDNOTES

ⁱ In 2007 the Justice Initiative published a comparative report on the research findings in Bulgaria, Hungary and Spain titled *I Can Stop and Search Whoever I Want: Police Stops of Ethnic Minorities in Bulgaria, Hungary, and Spain* (available at www.justiceinitiative.org/db/resource2?res_id=103735). The report on profiling in the Moscow Metro, based on a ground-breaking observational study, is available for download at http://www.justiceinitiative.org/db/resource2?res_id=103244.

ⁱⁱ Ms. Blears was speaking before the Commons Home Affairs Committee Inquiry into the impact of anti-terrorist measures on community relations. Reported in Dodd, Vikram and Alan Travis. “Muslims face increased stop and search.” *The Guardian*. 2 March 2005.

ⁱⁱⁱ We use the terms “ethnic profiling” rather than “racial profiling” in reflection of the European usage of ethnicity rather than race in discussing distinctions between categories of people. In this report, we use the term “ethnic profiling” to refer to distinctions made on the basis of ethnicity, race, nationality and religion, among other factors distinguishing “suspect minority groups” in the eyes of law enforcement.

^{iv} David Harris, *Profiles in Injustice; Why Racial Profiling Cannot Work*, New York, The New Press, 2002, p. 16-23.

^v Jackson, J., van den Eshof, P., and De Kleuver, E. (1997). “A Research Approach to Offender Profiling,” in J. Jackson and D. Bekerian (Eds.), *Offender Profiling: Theory, Research and Practice*, pp. 107-132. Chichester: Wiley.

^{vi} “as with other systemic practices, racial profiling can be conscious or unconscious, intentional or unintentional. Racial profiling by police officers may be unconscious.” *The Queen v. Cambell*, Court of Quebec (criminal division no. 500-01-004657-042-001) judgement of 27 January 2006. Cited in EU network of fundamental experts. CFR-CDF.Opinion4.2006 at 7.

^{vii} Center for Human Rights and Global Justice, New York University School of Law, *Irreversible Consequences: Racial Profiling and Lethal Force in the “War on Terror”*, New York, New York, May 2006. See also, Schauer, and Kennedy—complete citations.

^{viii} In the United States, where the courts have addressed racial profiling primarily through the lens of the Fourth Amendment prohibition of unreasonable searches and seizures, caselaw (Whren v US, and other cases) suggests it is constitutional for police to use race as one factor among several—but not as a sole factor—for a decision to stop someone. Weaver, 8TH Circuit, complete citation.

Randall Kennedy: US courts have generally agreed “that the Constitution does not prohibit police from routinely taking race into account when they decide whom to stop and question, as long as they do so for purposes of bona fide law enforcement (not racial harassment) and as long as race is one of several factors they consider”.

Similarly, UN CERD General Recommendation 31 warns of “questioning, arrests and searches which are in reality based *solely* on the physical appearance of a person, that person’s color or features or membership of a racial or ethnic group, or any profiling which expose him or her to greater suspicion” (para. 20)

^{ix} Home Office, Code of Practice A, paragraph 2.2.

^x See EU Network of Independent Experts on Fundamental Rights, “Ethnic Profiling”, December 2006, Ref. CFR-CDF.Opinion 4. 2006.

^{xi} “The whole point of the law is to require suppliers to treat each person as an individual, not as a member of a group. The individual should not be assumed to hold the characteristics which the supplier associates with the group, *whether or not most members of the group do indeed have such characteristics.*” Baroness Hale, Prague Airport Case, para. 74.

^{xii} Race Convention, Art. 5(d)(i).

^{xiii} Race Convention, Art. 5(a).

^{xiv} International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, entered into force March 23, 1976 [“ICCPR”], Art. 26.

^{xv} Article 2 (1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

^{xvi} ICCPR, Art. 2(1), together with Art. 9(1). See also ICCPR, Art. 14(1) (“All persons shall be equal before the courts and tribunals”).

^{xvii} Although this ‘soft law’ is not binding on States, it is instructive in determining the status of racial profiling in international law. See *Application for Review of Judgment No. 333 of the United Nations Administrative Tribunal*,

Advisory Opinion of 27 May 1987, International Court of Justice, 1987 ICJ LEXIS 2. Per Dissenting opinion of Judge Schwebel: “Beliefs expressed in United Nations committees are not sources of law”. At 35.

^{xviii} Durban Declaration against Racism, Racial Discrimination, Xenophobia and Related Intolerance, September 8, 2001, para. 72. See <http://www.unucuh.ch/pdf/Durban.pdf>. Racial profiling is defined as “the practice of police and other law enforcement officers relying, to any degree, on race, color, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity.”

^{xix} CERD, “Statement on Racial Discrimination and Measures to Combat Terrorism” (2003), para. 5.

^{xx} CERD, General Recommendation No. 30 (Non-Citizens), para. 6.

^{xxi} CERD, General Recommendation No. 31 (Administration of the Criminal Justice System), para. 20.

^{xxii} In recommendations to Moldova, the CERD stated: “The State party should ensure that actions taken should follow due process of law and that they avoid any suspicion of racial profiling” (Conclusions and recommendations of the Committee on the Elimination of Racial Discrimination, Republic of Moldova, U.N. Doc. CERD/C/60/CO/9 (2002), at 15). In recommendations to Canada, the CERD requested Canada to “... ensure that the application of the Anti-terrorism Act does not lead to negative consequences for ethnic and religious groups, migrants, asylum-seekers and refugees, in particular as a result of racial profiling” (Conclusions and recommendations of the Committee on the Elimination of Racial Discrimination, Canada, U.N. Doc. A/57/18 (2002), at 338).

^{xxiii} Code of Conduct for Law Enforcement Officials, Adopted by General Assembly resolution 34/169 of 17 December 1979, available at: http://www.unhchr.ch/html/menu3/b/h_comp42.htm.

^{xxiv} UN Code of Conduct, Arts. 2, 2(a) (Commentary)..

^{xxv} Recommendation (2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics, Appendix, Art. 40.

^{xxvi} *Id.*, Art 41.

^{xxvii} *Id.*, Art 47.

^{xxviii} *Id.*, Art 49.

^{xxix} EU network of independent experts on fundamental rights, CFR-CDF.Opinion4.2006, op cit at 54, at 8.

^{xxx} *Id* at 7.

^{xxxi} International law applies the same tests. See UN General Comment No. 18 of the HRC AND General Comment No 27 of the UN Human Rights Committee on Article 12 – the right to freedom of movement – of the International Covenant on Civil and Political Rights which addresses legitimate restrictions upon this right. U.N. Doc CCPR/C/21/Rev.1/Add.9 (1999), on the internet at: <http://www1.umn.edu/humanrts/gencomm/hrcom27.htm>.

^{xxxii} Belgian Linguistics Case (No. 2), 1 EHRR 252, para. 10 (1968).

^{xxxiii} Germany’s Constitutional Court officially forbade ethnic and racial profiling in the 1983 decision BVerfGE 65, but allows exceptions for the investigation and/or prevention of crime, which would seem to allow police considerable latitude. “The Situation of Roma in Germany,” *Monitoring the EU Accession Process: Minority Protections*. EU Accession Monitoring Program, Open Society Institute 2002. p. 189. For a useful overview of national law in the EU member states, see “EU Network of Independent Experts on Fundamental Rights, “Ethnic Profiling”, December 2006, Ref. CFR-CDF.Opinion4.2006.

^{xxxiv} However, it may be reasonably questioned whether, in light of human behavior, physical appearance can ever be anything less than decisive even where it constitutes only one of a number of components of a profile. See further discussion in sections IV and V.

^{xxxv} General Comment No. 29 on Article 4 ICCPR adopted at the 1950th Meeting of the UN Human Rights Committee, 24 July 2001. Article 4 includes a non-discrimination clause.

^{xxxvi} UNCERD statement of 8 March 2002, underlines the obligation of States to “ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, decent, or national or ethnic origin” (A/57/18, chap. XI, sect. C, para. 5).

^{xxxvii} Adopted 11 July 2002.

^{xxxviii} *Klass and Others v. Germany*, 6 September 1978, Series A no. 28, para 49.

^{xxxix} Para 32, *Fox, Cambell and Hartley v. the United Kingdom*, ECHR, 30 August 1990. dealing with the right to be informed of reason for arrest. Cited in Council of Europe Committee of Ministers, Guidelines on human rights and the fight against terrorism, adopted by the Committee of Ministers on 11 July 2002 at the 804th meeting of the Minister’s deputies.

^{xl} *The Sunday Times v. the United Kingdom* (No. 2) 26 November 1991, Series A, No. 217, pp.28-29

^{xli} *Brannigan and McBride v. the United Kingdom*, 26 May 1993, para. 43.

^{xlii} Daniel Moeckli, “Discriminatory Profiles; Law Enforcement After 9/11 and 7/7” *European Human Rights Law*

Review, 2005, 5, 517-532. See also, Iain Cameron, *National Security and the European Convention on Human Rights*, The Hague: Kluwer, 2000, pp. 435-437.

^{xliii} "Profiling can be used as part of both defensive and proactive counter-terrorist measures. The profiling of young Muslim men in the New York City Subways exemplifies the former. But profiling can also be used in pre-emptive strategies, as when, for example, the FBI targeted interviews of Muslim and Arab-Americans in order to gather intelligence." Bernard E. Harcourt, "Muslim Profiles Post-9/11: Is Racial Profiling an Effective Counter-terrorist Measures and Does It Violate the Right to be Free from Discrimination?" in Gould and Lazarus (eds), *TITLE & PUBLICATION DETAILS*

^{xliiv} Justice Initiative interview, Dr. Rolf Gössner, President, International League for Human Rights Germany (Berlin, March 2006).

^{xli v} Associated Press, "Italy arrests 142 in anti-terrorism sweep", July 9, 2005; Holly Manges Jones, "Italian police arrest 142 in post-London anti-terror sweep", *Jurist*, July 9, 2005.

^{xli vi} *Ibid*, citing Gen. Antonio Gironi, Lombardy regional commander of the paramilitary police.

^{xli vii} Terrorism Act 2000, Chapter 11, Part V, Section 44, power to stop and search, S. 44 .

^{xli viii} Home Office Press Release, "Government and Police Must Engage Communities To Build A Fairer Criminal Justice System", Reference: 220/2004, July 2, 2004. An Official Home Office Study indicates that in 2002/2003 a "total of 21,577 searches were made under s44 (1&2) compared with 8,550 in 2001/02. Searches of White people increased from 6,629 to 14,429 (up 118%), for Black people from 529 to 1,745 (up 230%) and for Asian people from 744 to 2989 (up 302%). 61% of searches took place in the MPS and 21% in the City of London. P. 28 Statistics on Race and the Criminal Justice System - 2003, A Home Office Publication under Section 95 of the Criminal Justice Act 1991. See also "UK Stop and Searches Under Anti-Terror Law in 2004", *Privacy International*, 05/07/04, available at: <http://www.privacyinternational.org/article.shtml?cmd%5B347%5D=x-347-63328>

Aron Kundnani observes based on official figures that: "From 2001/02 to 2002/03, there was a fourfold increase in the number of Asians stopped and searched under the Terrorism Act 2000. Blacks and Asians were **four** times more likely than Whites to be stopped under these powers. And people categorised under the police's 'Other' category - which would presumably include those from Middle Eastern and North African refugee communities - were **seven** times more likely to be stopped and searched than Whites." Kundnani, Arun. "Analysis: the war on terror leads to racial profiling". 7 July 2004.

^{xli x} The majority of arrests appear to result in immigration proceedings and deportations. Aron Kundnani, "Racial profiling and anti-terror stop and search," Institute of Race Relations, January 31, 2006.

ⁱ See Dominic Casciani, "Muslim anger over stop and search", *BBC News online*, July 2, 2004.

ⁱⁱ Fraser, C. (2005) "Are police misusing stop-and-search?" *BBC News Online*.

ⁱⁱⁱ Dodd, Vikram "Surge in stop and search of Asian people after July 7." *The Guardian*: 7.

ⁱⁱⁱⁱ *Ibid*.

^{liv} "This method had been previously used - without much success- in the late 1970s and 1980s to track down members of the Red Army Faction who had changed their identity and gone underground. At that time, the police searched for "conspiratorial flats" by screening the data of electricity providers and other agencies for clients who apparently tried to avoid contact with the authorities, were using only little electricity and water, or who paid their utility bills in cash to avoid opening a bank account, and similar criteria." Daniel Moeckli, "Discriminatory Profiles: Law Enforcement after 9/11 and 7/7", *European Human Rights Law Review*, 2005.

According to Mr. Alexander Dix, Berlin Commissioner for Data Protection and Freedom of Information, the rasterfahndung operation carried out in the 1970s turned up one terrorist, however there is conflict over whether this person was identified due to the computerised search or other methods. Justice Initiative Interview, Mr. Alexander Dix, Berlin, March 2006.

^{lv} See Wilhelm Achelpöehler and Dr. Holger Niehaus, "Data Screening as a Means of Preventing Islamist Terror-ist Attacks on Germany", *German Law Journal*, Vol. 5, No. 5, May 1, 2005.

^{lvi} This figure is cited in numerous press and academic reports.

^{lvii} These criteria were established by the "Sub-Working Group Grid" of the Coordination Group on International Terrorism (KG IntTE). The KG IntTE was set up on decision of a Working Group (AK II) of the Interior Ministers' conference (IMK); it is chaired by the BKA and includes the subcommittee "leadership, operations and fight against crime (UA FEK), AG Krip, Federal Border Guards, Foreign Intelligence Service, internal intelligence service, chief public prosecutor and army representatives. See Kant, Martina. "Nothing doing? Taking stock of data trawling operations in Germany after 11 September 2001". *Statewatch Bulletin*; vol 15 no 3/4 May-August 2005.

^{lviii} Entries in the sleeper database by Länd: Baden-Württemberg : 3,800; Lower Saxony : 2,588; Bavaria : 2,053; North-Rhine Westphalia : 11,004; Berlin : 710; Reinland Pfalz : 1,792; Brandenburg : 333; Saarland : 416; Bremen : 546; Sachsen : 1,317; Hamburg : 811; Sachsen-Anhalt : 1,292; Hessen : 3,739; Schleswig-Holstein : 534; Mecklenburg; Vorpommern : 895; Thuringia : 158; Total : 31,988. These figures are listed in Kant, *Taking Stock* based on a BKA evaluation report.

^{lix} See Johnson and Crawford, *Germany's Terrorist Hunt*. See also Kant, *Taking Stock*.

^{lx} Justice Initiative Interview, Mr. Wolfgang Wieland, Green Party Member of German Bundestag, Berlin, March 2006. [Fix title – in German it is: Mitglied des Deutschen Bundestages, Sprecher für Innere Sicherheit.

^{lxi} Kant, *Taking Stock*.

^{lxii} In the words of a Belgian expert and member of the network of independent experts on radicalization: “It is nowadays a common thread within EU counterterrorism thinking and action to single out this radicalization process as the main focal point in combating terrorism.” Rick Coolsaet, “Between Al-Andalus and a failing integration; Europe’s pursuit of a long-term counterterrorism strategy in the post-AlQaeda era,” IRRI-KIIB, Academia Press, Brussels, May 2005, p. 9.

^{lxiii} Communication from the Commission to the European Parliament and the Council concerning Terrorist recruitment: addressing the factors contributing to violent radicalization, Brussels, 21.9.2005, COM(2005) 313 final. The European Union Strategy for Combating Radicalisation and Recruitment to Terrorism, Council of the European Union, Brussels, 24 November 2005, 14781/1/05 Rev 1, Limite, JAI 452 / ENFOPOL 164 / COTER 81.

^{lxiv} In a recently published guide aimed at local authorities, the National Coordinator for Counterterrorism (NCTB) states that radicalization is: “a growing willingness to strive for and/or support radical changes in society which are at odds with the democratic legal order and/or which involve the use of undemocratic means.” National Coordinator for Counterterrorism, *Counterterrorism at Local Level: A Guide*, p. 61, available at:

<http://english.nctb.nl/publications/reports/nctb/>.

^{lxv} National Coordinator for Counterterrorism, *ibid.*, p. 64.

^{lxvi} October 3, 2005 press release issued by the Netherlands Counterterrorism Coordinator "Comprehensive approach to radicalism and radicalisation required", at

http://www.minbzk.nl/uk/public_safety/press_releases/comprehensive_0

^{lxvii} "The International Terrorist Threat To The UK," speech by the Director General of the Security Service, Dame Eliza Manningham-Buller, at Queen Mary's College, London, 9 November 2006, at

<http://www.mi5.gov.uk/output/Page568.html>

^{lxviii} See Jean-Patrick Courtois, Report on behalf of the Commission on Laws, « Projet de loi relatif à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers », Ordinary session 2005-2006, Annex to the Senate session record of December 6, 2005, available at : <http://www.senat.fr/rap/105-117/105-1177.html>. Also, Piotr Smolar, « L’antiterrorisme, selon le patron des RG », *Le Monde*, November 24, 2005; Agence France Presse « Quand des commerces cachent des salles de prières clandestines », September 26, 2005 at http://www.acb54.com/breve.php3?id_breve=17.

^{lxix} The monitoring activities carried out by the regional centres to combat radical Islam are discussed in detail below.

^{lxx} « Islamisme en France: rôle croissant du prosélytisme de masse (préfet Proust) », Agence France Presse (AFP); « Créés fin janvier 2005, ces pôles sont placés sous l’autorité des préfets. Leur principe consiste à utiliser tous les ressorts de la police administrative afin de mettre en difficulté les petits commerces ou les locaux de réunion utilisés par des militants radicaux...

‘L’objectif est de déstabiliser l’Islam radical très en amont, sans perturber l’action des services dans le cadre de la lutte antiterroriste ni interférer avec l’Islam républicain’, explique le directeur central des renseignements généraux (RG), Pascal Mailhos. » Piotr Smolar, « Les lieux de prosélytisme de l’Islam radical mis en difficulté », *Le Monde*, April 11, 2006.

^{lxxi} Piotr Smolar, « Les lieux de prosélytisme de l’Islam radical mis en difficulté », *Le Monde*, April 11, 2006.

^{lxxii} *The French lesson, Europe and terrorism*, *The Economist*, 13/08/2005.

^{lxxiii} Jean Chichizola, « Islamisme radical : la police d’Ile-de-France multiplie les découvertes », *Le Figaro*, May 18, 2005.

^{lxxiv} There are ordinary channels for controlling the compliance of businesses with health, safety, labour and tax regulations.

^{lxxv} Justice Initiative Interview, Mr. H.L., Paris, July 2006.

^{lxxvi} The raid involved sites in cities in fourteen provinces: Bari, Bologna, Cagliari, Catania, Florence, Genoa, Milan, Naples, Palermo, Reggio, Calabria, Turin, Venice and Rome. AGI, “Interior Ministry, 40 Arrests in Italy”, Special

Service by AGI on behalf of the Italian Prime Minister's Office, Rome August 11 available at: <http://www.agi.it/english/news.pl?doc=200608112053-1270-RT1-CRO-0-NF82&page=0&id=agionline-eng.italyonline>;

^{lxxvii} Associated Press, "Italy Arrests 40 in Security Crackdown", Rome, August 11, 2006. See also di Giorgio, *Italy Arrests*; and AGI, *Interior Ministry, 40 Arrests in Italy*.

^{lxxviii} AGI, "Interior Ministry, 40 Arrests in Italy", Special Service by AGI on behalf of the Italian Prime Minister's Office, Rome August 11, 2006, available at: <http://www.agi.it/english/news.pl?doc=200608112053-1270-RT1-CRO-0-NF82&page=0&id=agionline-eng.italyonline>; Associated Press, "Italy Arrests 40 in Security Crackdown", Rome August 11, 2006; Massimiliano di Giorgio, "Italy Arrests 40 in Security Swoop", Reuters, August 11, 2006 available at:

http://www.swissinfo.org/eng/international/ticker/detail/Italy_arrests_40_in_security_swoop.html?siteSect=143&sid=6967219&cKey=1155326020000

^{lxxix} Associated Press, "Italy Arrests 40 in Security Crackdown", Rome, August 11, 2006.

^{lxxx} The organization represents 400 mosques in Germany.

^{lxxxi} Cited in Bakir Siddik and Ben Harburg, "The Ghosts that I awoke: German anti-terror law and religious extremism", available at: http://www.humanityinaction.org/docs/Bakir_and_Harburg_Final%5B1%5D.doc

^{lxxxii} Article 421-2-1 of the Penal Code designates as an "act of terrorism" participation in any group formed or association established with a view to the preparation, marked by one or more material actions, of any of the acts of terrorism provided for under the previous articles... Previous articles provide a list of acts that are considered as acts of terrorism "where they are committed intentionally in connection with an individual or collective undertaking the purpose of which is seriously to disturb public order through intimidation or terror". (Article 421-1) The list includes: (1) wilful attacks on life, wilful attacks on the physical integrity of persons, abduction and unlawful detention and also as the hijacking of planes, vessels or any other means of transport; (2) theft, extortion, destruction, defacement and damage, and also computer offences; (4) the production or keeping of machines, dangerous or explosive devices; the production, sale, import or export of explosive substances; the purchase, keeping, transport or unlawful carrying of explosive substances or of devices made with such explosive substances; the detention, carrying, and transport of weapons and ammunition; offences...forbidding the designing, production, keeping, stocking, purchase or sale of biological or toxin-based weapons; offences [involving] ... developing, producing, stocking and use of chemical weapons and ...their destruction; (5) receiving the product of one of the offences set out in paragraphs 1 to 4 above; (6) the money laundering offences set out in Chapter IV of title II of Book III of the present Code; (7) the insider trading offences set out in article L.465-1 of the Financial and Monetary Code. [Official English translation, available on "legifrance"

<http://195.83.177.9/code/liste.phtml?lang=uk&c=33&r=3794#art16569>

^{lxxxiii} Piotr Smolar, «Les prisons françaises comptent 358 détenus pour activisme », *Le Monde*, September 9, 2005.

^{lxxxiv} A detailed inquiry report discussing the implementation of AMT provisions in France, published by the International Federation of Human Rights Leagues comments: "It is particularly noteworthy that, in the last couple of years the "anti-terrorist" authorities of the 14th Section have chosen to charge the overwhelming majority of those arrested on suspicion of involvement of terrorist activities with participation in such associations. The way in which the offence has been defined and indeed interpreted is especially interesting:

'The offence continues to consist of preparatory participation: participation in a group or an understanding, preparation of a subsequent or ecological act of terrorism. The association therefore remains independent of the actual commission of the offences, which are its object. This is significant, since it means that, as long as it is sufficiently realised, the preparation alone is enough to constitute the punishable offence. (Yves Mayaud, *Le Terrorisme*, Dalloz, 1997)...

Professor Mayaud's understanding of Article 421-2-1 is in our view correct,... The intention of the Article is quite clear: the investigating and prosecuting authorities (the police judiciaire in the first instance, then the juge d'instruction and finally the Procureur de la République) are statutorily absolved from any duty to link the alleged participation with any actual execution of a terrorist offence or even a verifiable plan for the execution of such an offence." Michael McColgan and Alessandro Attanasio, "International Mission of Inquiry France: Paving the Way for Arbitrary Justice" International Federation of Human Rights Leagues, March 1999, p. 9.

^{lxxxv} McColgan and Attanasio, *ibid.*, p. 10 and p. 14. Also note that: "In this matter of participation in an association of malefactors (AMT), little or no effort seems to have been made within the context of the legal prosecution of the cases that have been drawn to our attention ("Chalabi", "Ali touchent", "Coupe Mondiale", etc.) to establish precisely which specific terrorist act, let alone which category of terrorist act, was allegedly being prepared by those charged. This is not to say that diligent enquiries have not been made by the police and others to discover specific

plans, but they seem not to have met with great success, any more than the investigations into the 1995 Paris bombings have yielded any convictions.”

^{lxxxvi} According to Privacy International, “in 2003 alone there were over 70 anti-terror arrests, and these figures were heralded by the Interior Minister, Giuseppe Pisanu as ‘evidence of the commitment of Italian police forces in the face of Muslim terrorism.’” Gus Hosein, “European Anti-Terrorism Discrimination and the Threat of Indiscriminate Policy”, *Privacy International*, September 20, 2005.

^{lxxxvii} In an interview, Professor Salvatore Pallida, who has been documenting all such arrests, commented: “there were 208 arrests between 2001 and today.. With respect to these arrests, Mr. Berlusconi said we saved Italy from terrorism. In reality of these 208 persons, in almost every case they were released. .. Most of these arrests had nothing at all to do with terrorism; they were street vendors, simple migrants, people who really had nothing to do with terrorist activities.” Interview, Professor Salvatore Pallida, University of Genoa, Genoa, May 2006.

^{lxxxviii} Interview, Mr. Carlo Bonini, security specialist and journalist at *La Repubblica*, Milan, May 2006.

^{lxxxix} Justice Initiative Interview, Professor Salvatore Pallida, Genoa, May 2006. Justice Initiative Interview, Professor Alessandro dal Lago, University of Genoa, Genoa, May 2006. Justice Initiative Interview, Mr. Carlo Bonini, Milan, May 2006.

^{xc} Institute of Race Relations (IRR), “New study highlights discrimination in use of anti-terror laws,” September 2, 2004.

^{xc1} Ibid.

^{xcii} A search of Finsbury Park Mosque, in north London, also led to the discovery of forged passports, CS gas, knives, guns, tents and guns capable of firing blanks. At <http://news.bbc.co.uk/1/hi/uk/4689816.stm>

^{xciii} This is quite different from considering certain organizations as suspicious based on empirical evidence revealing that a particular organization or group actually supports the use of violent means. In other words, the simple fact that an organization is Salafist draws suspicion, whether or not that organization supports violence. This is no longer intelligence-based law enforcement, but racial profiling.

^{xciv} National Coordinator for Counterterrorism, “Counterterrorism at Local Level: A guide”, June 2006.

^{xcv} For more information on the evolution of this monitoring see Laurent Bonnelli, «Quand les services de renseignement construisent un nouvel ennemi», *Le Monde Diplomatique*, April 2005.

^{xcvi} Statements made to the press in July 2005 by Mr. Pascal Mailhos, Central Director of the RG, indicated that at least 80 mosques were being closely watched at that time. He stated that 1600 prayer sites were being observed, of which 80 were considered as ‘sensitive’. He further explained that 40 mosques were “under constant pressure from radical Islamic structures”, of which 20 were in the hands of radicals. In another more recent interview with the newspaper *Le Monde*, Mr. Mailhos, stated: It’s a fact: there are less radical speeches. But surveillance of certain places is essential, less due to what is said there, than due to the meetings that occur in their surroundings. Of 1,700 places of worship enumerated a year ago, 75 were targets of takeover attempts. Half of them resisted, the other half was conquered by radicals. Since October 2003, 31 radical activists or preachers have been expelled. Ten imams remain closely watched. Foreign influence is still strong. We observed that, out of about 1000 imams, 360 spoke French well, 315 spoke French to a certain degree, and 350 had very poor mastery over the language. This is a source of worry. Associated Press, « Une vingtaine de mosquées en France aux mains d’Islamistes radicaux, selon les RG », July 22, 2005 ; Agence France Presse, « Selon les RG, une vingtaine de mosquées en France sont aux mains des radicaux », July 24, 2005.

^{xcvii} See, e.g., *East African Asians*, 3 EHRR 76 (1973), para. 207 (“a special importance should be attached to discrimination based on race”); *Hoffman v Austria*, 17 EHRR 293, para. 36 (1993) (“a distinction based essentially on a difference in religion alone is not acceptable”); *Gaygusuz v. Austria*, 23 EHRR 365, para. 42 (1996) (same for nationality). Neither a) limiting ethnic profiling only to “non-citizens” nor b) substituting nationality for ethnicity in the profile brings an otherwise unlawful practice within the law.

^{xcviii} P. 5, Digest of Jurisprudence of the UN And Regional Organizations On the Protection Of Human Rights While Countering Terrorism, at <http://www.ohchr.org/english/about/publications/docs/digest.doc>

^{xcix} Observation modelled on Livingston and Goss: “it could simultaneously be true that 90 percent of major cocaine traffickers on I-95 are black and Hispanic, and that 99.9 percent of black and Hispanic motorists on that highway are not drug traffickers.” Livingston, Gross 5. Full citation.

^c Cole, 55

^{ci} See *Timishev* – the case where a man was barred from crossing an internal Russian administrative border based on an oral order not to admit persons of Chechen ethnic origin – the ECHR concluded that this constituted a breach of Art 14 taken together with Art 2 of Protocol No. 4 (freedom of movement): “The court considers that no difference

in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society...."

^{cii} Opinion 4, *op cit*.

^{ciii} Sean O'Neill and Daniel McGrory, "Detectives Draw Up New Brief in Hunt for Radicals," *The Times*, December 28, 2005.

^{civ} *Report of the Official Account of the Bombings in London on 7 July 2005*, Return to an Address of the Honourable House of Commons (11 May 2006), p. 31. It had earlier been reported that British investigations into the bombings had "forced Scotland Yard to throw away the existing intelligence profile of a terrorist because none of the bombers fitted the model." Police 'betrayed' over cash to fight terrorism, *The Times*, December 28, 2005.

^{cv} Bush details foiled 2002 al Qaeda attack on L.A. Thursday, February 9, 2006;

<http://www.cnn.com/2006/POLITICS/02/09/bush.terror/index.html>

^{cvi} Bernard E. Harcourt, "Muslim Profiles Post-9/11: Is Racial Profiling an Effective Counter-Terrorist Measure and Does It Violate the Right to be Free from Discrimination?" In Gold and Lazarus (eds) at p. 10.

^{cvii} Craig Whitlock, Washington Post, March 12, 2007. "Terrorism suspects from atypical backgrounds are becoming increasingly common in Western Europe. With new plots surfacing every month, police across Europe are arresting significant numbers of women, teenagers, white-skinned suspects and people baptized as Christians.... The demographics of those being arrested are so diverse that many European counter-terrorism officials and analysts say they have given up trying to predict what sorts of people are most likely to become terrorists.... Indeed, there are clear signs that al-Qaeda cells and affiliates are intentionally recruiting supporters from nontraditional backgrounds as a way to avoid detection."

^{cviii} Harcourt, "Muslim Profiles Post-9/11, p. 4"

^{cix} There are at least two instances in the US in which police stops have apprehended terrorists: the so-called "millennium Bomber" Ahmed Rassam was stopped by a US Customs official who then searched his car and found explosives because "his story just didn't add up". Oklahoma City bomber Timothy McVeigh was arrested as a result of a routine traffic check because his car had no rear license plate.

^{cx} Of the 80,000 Arabs and Muslim foreign nationals who were required to register after Sept 11, the 8,000 called in for FBI interviews, and more than 5,000 locked up in preventive detention, not one stands convicted of a terrorist crime today. In what has surely been the most aggressive national campaign of ethnic profiling since WWII, the government's record is 0 for 93,000. David Cole, "Are We Safer?" *New York Review of Books*, Volume 53, No. 4, March 9, 2006.

^{cxii} Cited in "The French Lessons, Europe and Terrorism", *The Economist*, August 13, 2005.

^{cxiii} Andrew Blick, Toufyal Choudhury and Stuart Weir, *The Rules of the Game, Terrorism, Community and Human Rights*, Democratic Audit, Human Rights Center, University of Essex, Joseph Rowntree Reform Trust, 2006, at 33-34.

^{cxiv} Dr. Farhad Khosrokhavar, describing research based on interviews with radical Muslims in jail in England and France, conference on Muslims in Europe post 9/11, Saint Anthony's College and Princeton University, 25-26 April 2003, Oxford, UK. http://www.sant.ox.ac.uk/princeton/pap_khosro.shtml

^{cxv} Blick, Choudhury and Weir, *The Rules of the Game, Terrorism, Community and Human Rights*, 2006, at 23.

^{cxvi} Experts are divided on the importance of foreign policy in driving the decisions to commit an act of terrorism. Discussion with Professor Rik Coolsaet, member of the European Network of Experts on Radicalisation. Germans reportedly felt their threat level was reduced by having no troops in Iraq, sense of relative security that was shattered by revelations of a foiled bomb plot. Citations to news reporting.

^{cxvii} Some 350 arrests in 2006 across Europe according to EUROPOL. See TE-Sat 2007 report. There is no data yet on the outcomes of those arrests in terms of charges, releases and convictions.

^{cxviii} Rohit Jaggi, "Police gain extra time to question suspects," *The Financial Times*, August 9, 2004, at <http://www.ft.com>; Institute of Race Relations (IRR), "Terror policing brings many arrests but few charges," March 5, 2003, at <http://www.irr.org.uk>; Liberty, *The Impact of Anti Terrorism Powers on the British Population* (June 2004), at <http://www.liberty-human-rights.org.uk>; Liberty, "Anti-terrorism legislation – A handbook on how to alienate Muslim communities," spring 2003.

^{cxviiii} Hamed Chapman, "Most terrorist convictions are non-Muslim," *The Muslim News*, August 27, 2004, at <http://www.muslimnews.co.uk>

^{cxix} Rohit Jaggi, "Police gain extra time to question suspects," *Financial Times*, August 9, 2004; *The Impact of Anti Terrorism Powers on the British Population* (June 2004); IRR, "Terror policing brings many arrests but few

charges,” March 5, 2003 “Anti-terrorism legislation – A handbook on how to alienate Muslim communities,” spring 2003.

^{cxix} Liberty, “Internment – detention without trial,” August 2004. We need to update this information. It is possible the ratios may change when we do so.

^{cxxi} Andrew Blick, Toufyal Choudhury and Stuart Weir, *The Rules of the Game, Terrorism, Community and Human Rights*, Democratic Audit, Human Rights Center, University of Essex, Joseph Rowntree Reform Trust, 2006, at 19.

^{cxxii} Daniel Wagman, *Ethnic Profiling by Police in Spain*, Madrid, GEA21, date

^{cxxiii} A leader of Milli Gorus (IGMG), cited in the International Crisis Group, *Islam and Identity in Germany*, European Report No. 181, 14 March 2007, at 17.

^{cxixiv} At a meeting of Muslim associations from the Paris suburbs, one representative commented: “We are all afraid here. I am afraid. The officials can come at 5.00 a.m. and stick any label on us. They can ruin our lives.” Justice Initiative Participation, Meeting of Muslim associations, Paris, July 2006.

^{cxixv} European Commission against Racism and Intolerance (ECRI), *Second Report on Italy* (adopted on June 22, 2001 and made public on April 23, 2002), at <http://eumc.eu.int/eumc/material/pub/anti-islam/collection/Italy.pdf>

^{cxixvi} Information from Luciano Scagliotti, Vice President of the European Network against Racism (ENAR), to the IHF per email August 23, 2004.

^{cxixvii} ENAR, *ENAR Shadow Report 2003: Italy* (written by Sara Cerretelli), p. 30, at <http://www.enar-eu.org>

^{cxixviii} ECRI, *Second Report on Italy*.

^{cxixix} Home Office, *Research Study 220: Religious Discrimination in England and Wales* (February 2001), p. 52, at <http://www.homeoffice.gov.uk>

^{cxixxx} “Terror swoops ‘persecuting’ Muslims, *The Guardian*, August 5, 2004. According to the Islamic Human Rights Commission, many Muslims also felt that police did not respond adequately to anti-Muslim attacks during the first backlash after September 11, which negatively influenced their perception of police practice and their readiness to turn to police. Information from Arzu Merali, director of research of the ICHRC, to the IHF per email, December 2002 and February 2003.

^{cxixxi} “Rise in police searches of UK Asians,” *Daily Times*, August 24, 2004, at <http://www.dailytimes.com.pk/>

^{cxixxii} Liberty, *Reconciling Security and Liberty in an Open Society – Liberty Response* (August 2004).

^{cxixxiii} “Islamophobic policing alienating young Muslims: UK government,” Rediff.com, July 3, 2004, at <http://www.rediff.com/news/>

^{cxixxiv} Martin Scheinin, Special Rapporteur on the promotion and protection of human rights while countering terrorism, “Profiling in counter-terrorism,” Presentation to the UN Working Group on People of African Descent, Geneva, 21 January 2007.

^{cxixxv} An interference with liberty and security as well as the right to a fair trial cannot be justified. Proof of the interference is sufficient to constitute a violation of international legal standards. A strict proportionality test is applied with the right to respect for private and family life, home and correspondence; freedom of thought, conscience and religion; freedom of expression; freedom of assembly and association. Any interference must be in accordance with the law and necessary in a democratic society for the achievement of a number of legitimate aims.

^{cxixxvi} Cross reference to discussion on alternatives below.

^{cxixxvii} *Id.*, Art 47.

^{cxixxviii} Deborah Ramirez, Sasha Cohen O’Connell and Rabia Zafar, *Developing Partnerships Between Law Enforcement and American Muslim, Arab, and Sikh Communities: A Promising Practices Guide*. Open Society Institute, Northeastern University and The Whiting Foundation, May 2004. Demos report on UK Muslim outreach unit, and other efforts.