



General Policy Paper No. 4

Counter-terrorism and combating racism

November 2007

In recent years ENAR members have become increasingly aware of the negative impact of counter-terrorism strategies on ethnic and religious minorities in Europe. The European Union is developing a coordinated response to terrorism, and these measures impact on national policies and strategies. In November 2005 the 4th ENAR General Assembly held a discussion on 'Racism, Ethnicity, Religion and Terrorism'. This initial exchange was subsequently supplemented by discussions on racial profiling and counter-terrorism at the fifth ENAR General Assembly in 2006, and during the ENAR Strategic Congress in April 2007. During 2005 and 2006 ENAR members across Europe collected data on the impact of counter-terrorism strategies on minorities through the Shadow Reports. This General Policy Paper is the outcome of these discussions and data collection, and takes account of current and emerging European Union action. The paper was presented to ENAR members for consultation during the summer of 2007, discussed at the 25th ENAR Board meeting in Lisbon in September 2007 and adopted at the 6th ENAR General Assembly in November 2007.

General Policy Paper No. 4: Counter-terrorism and combating racism

This fourth General Policy Paper of the European Network against Racism (ENAR) is the product of ongoing concern and reflection regarding the negative impact of some strategies which aim at countering terrorism in the European Union. Despite many statements and commitments that the fight against terrorism must respect the International and European human rights frameworks, the experience of ENAR members demonstrates that there is a significant gap between principled statements and the reality of the counter-terrorism measures which are being implemented. In its 2005 European Shadow Report on the situation of racism in the EU, ENAR concluded that:

“Measures adopted by governments to counter terrorism are causing serious concerns for the protection of human rights and the racialisation of the security agenda... evidence available raises serious questions in terms of how government responses are both targeting minorities in a discriminatory manner and failing to protect minorities.”¹

Despite improvements in other areas², the 2006 ENAR European Shadow Report confirmed this finding as a continuing negative trend in the legal and political context of the EU.³

Terrorism is not a new phenomenon in the European Union. The context of terrorism is set primarily by each Member States' own historical and political situation. However in the twenty-first century, in the aftermath of the events of 11 September 2001 and the London and Madrid bombings, the counter-terrorism agenda has been increasingly placed at the heart of national and European agendas. Policy-makers, politicians, the media and the broader public have come to identify the terrorist threat as more serious than ever and in particular the threat from so-called 'Islamic terrorists'. This is despite the finding in the 2007 Europol report on the situation of terrorism in the EU that “The vast majority of (terrorist attacks in 2006) resulted in limited material damage and were not intended to kill.”⁴ While terrorism is a legitimate concern, there is a real danger that political, media and public dialogue can fuel the politics of fear.

Terrorism itself is not an ideology or movement but rather a tactic or method for attaining particular goals. The European Union Framework Decision of 13 June 2002 stipulated that all offences shall be deemed to be terrorist offences “which, given their nature or context, may seriously damage a country or international organisation” and if they are committed with the aim of “i) seriously intimidating a population, or ii) unduly compelling a Government or international organisation to perform or abstain from performing any act, or iii) seriously destabilising or destroying

¹ ENAR (2006) European Shadow Report 2005, p. 29.

² Such as legislation against discrimination, see ENAR (2007) European Shadow Report 2006, pp. 21-22.

³ ENAR (2007) European Shadow Report 2006, p. 26.

⁴ Europol (2007) EU Terrorism Situation and Trend Report 2007', p. 3.

the fundamental political, constitutional, economic or social structures of a country or an international organisation".⁵

A group or individual's decision to turn to violence is usually situational and seldom endemic to the religious tradition to which they are related. Islam does not cause terrorism, nor does any other religion with which terrorist acts have been associated.⁶ Terminology such as 'islamic terrorism' has led to a growing perception that there is somehow an inherent link between Islam and terrorism - a perception which is contradicted by the facts, but which has led directly to increased Islamophobia and a disproportionate impact of counter-terror measures on Muslim communities.

According to the 2007 Europol report on the situation of terrorism in the European Union, 498 attacks were carried out in the EU in 2006, only one of which was identified as 'islamist'. Nevertheless, the report concluded that: "investigations into islamist terrorism are clearly a priority for Member States' law enforcement as demonstrated by the number of arrested suspects".⁷ Half of all arrests were related to 'islamist terrorism', and the majority of suspects were born in Algeria, Morocco and Tunisia. However the suspects involved in the foiled plots reported in the UK and Denmark in 2006 were born or raised in an EU Member State.⁸ This demonstrates a clear misdirection of the priorities of Member States law enforcement activity. There is an overwhelming preoccupation with so called 'islamic terrorism' in Europe today, a pre-occupation which undermines the fight against terrorism itself, and alienates large proportions of people living in the European Union.

The role of the European Union

For most of the European Union's history counter-terrorism was considered the remit of the domestic policy of its Member States. However, in the aftermath of 11 September 2001 and the Madrid and London bombings, new EU-wide anti-terrorism measures were adopted. The European Council endorsed the revised 'Plan of Action on Combating Terrorism' on 18 June 2004. The most recent update on the Action Plan of 9 March 2007 describes 138 separate actions across the four pillars of: prevent, protect, pursue and respond. In the context of preventative measures one of the actions is to 'target inequalities and discrimination where they exist within the EU and promote long-term integration where appropriate', however no reference is made to the role of the Racial Equality Directive (Directive 2000/43/EC) in this regard. The plan also includes the need to 'make proposals for enhancing inter-cultural dialogue', but makes no reference to the opportunity presented by the designation of 2008 as the European Year for Intercultural Dialogue. In the context of responding to terrorism the Plan notes the need to protect minority communities who may be at risk of a 'backlash' in the event of a major attack and the update refers to the monitoring role of the European Union Monitoring Centre on Racism and Xenophobia (EUMC) (now the European Fundamental Rights Agency) in this regard. The Commission has announced a package containing a series of proposals implementing the action plan, dealing with the criminalization of terrorist training,

⁵ Framework Decision of the Council of 13 June 2002 on combating terrorism.

⁶ Club of Madrid (2005) Addressing the causes of terrorism, volume I, p. 27

⁷ Europol (2007) EU Terrorism Situation and Trend Report 2007', p. 3. The vast majority (85%) of terrorist attacks in the EU in 2006 were perpetrated by separatist terrorists. According to Europol there were no successful 'islamist terrorist' attacks in the EU in 2006.

⁸ Europol (2007) EU Terrorism Situation and Trend Report 2007', p. 3.

recruitment and public provocation to commit terrorist offences, the prevention of the use of explosives by terrorists and the use of airline passenger information in law enforcement investigations as well as the second report on the implementation of the Framework Decision on combating terrorism.⁹ The report, however, lacks consideration of the impact of implementation on ethnic and religious minorities, despite the recognition that “antiterrorist measures such as implementing legislation must be applied with full respect for fundamental rights and the principle of the rule of law.”¹⁰

The fight against racism and the fight against terrorism

The challenge facing the European Union is to secure the effectiveness of its counter-terrorism strategy by ensuring that it is carried out within the context of the international human rights framework and in a non-discriminatory manner. To date insufficient attention has been given to the interaction between counter-terrorism strategies and the fight against racism. Counter-terrorism is both dependent on effective implementation of the rights to equality and non-discrimination, as well as a potential barrier to their full realisation. The dialogue on counter-terrorism too often falls into the trap of placing the protection of the majority in opposition to the rights of the minority. This analysis is a false start. Undermining the rights of the minority undermines society as a whole and, rather than contributing to security, reduces the community cohesion that is necessary for the effectiveness of counter-terrorism measures.

The fight against racism and the fight against terrorism are intrinsically linked. Both racism and terrorism are the product of intolerance and present serious threats to fundamental rights. While there is no inherent contradiction between these two imperatives, it is clear that the fight against terrorism is having a detrimental impact on broader efforts to overcome intolerance. Legal, policy and practice developments in the fight against terrorism have contributed to an environment whereby direct and indirect forms of discrimination are increasingly tolerated and even mandated. Official actions, such as the use of racial profiling, present direct manifestations of racial discrimination, while the overall tone of public debate and political action has contributed to increasing prejudice and subsequent discrimination across the whole range of social spheres. Recent developments and trends in the fight against terrorism are undermining integration and social inclusion contributing to a context whereby a small minority justify terrorism. Anti-racism is not a right to be sacrificed in the context of a broader security agenda, but rather should represent a key element of any strategy aimed at enhancing security in Europe.

Recommendations

In order to ensure that efforts to combat racism and terrorism are mutually reinforcing, ENAR proposes five key principles which should underpin all actions:

1. Terrorism is an extreme form of intolerance which represents a serious threat to fundamental rights.

⁹ IP/07/1649: Fight Against Terrorism: stepping up Europe’s capability to protect citizens against the threat of terrorism.

¹⁰ COM(2007) 681 final, REPORT FROM THE COMMISSION based on Article 11 of the Council Framework Decision of 13 June 2002 on combating terrorism, at p. 4

2. Counter-terrorism must be conducted in the framework of human rights and anti-discrimination.
3. Counter-terrorism measures must not have a disproportionate impact on ethnic and religious minorities.
4. Anti-racism is a key element in preventing terrorism.
5. Effective counter-terrorism is the result of engagement and participation with all communities.

1. Terrorism is an extreme form of intolerance which represents a serious threat to fundamental rights

Terrorism is a genuine, serious, and persistent threat to human rights and human security in the European Union. ENAR firmly condemns terrorism, which is an extreme form of intolerance.

As stated in the Council of Europe's Guidelines on Human Rights and the Fight against Terrorism:

"States are under the obligation to take measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist acts, especially the right to life. This positive obligation fully justifies States' fight against terrorism in accordance with the present guidelines".

However as the EUMC, now the European Fundamental Rights Agency, has pointed out, "Security measures are needed, but they must be weighed against their impact on all communities and their human rights implications".¹¹

ENAR calls on the European Union and its Member States to:

- Take all appropriate action to effectively protect everyone in Europe from terrorism.
- Design, implement and evaluate counter-terrorism measures in an open and transparent manner which takes into account the perspectives of everyone living in the European Union.
- Undertake specific activities to communicate the European Union action plan to everyone in Europe, and in particular to ethnic and religious minorities.

2. Counter-terrorism must be conducted in the framework of human rights and anti-discrimination

Violence, brutality and terrorism as means of settling political disputes have existed throughout human history. The promulgation of humanitarian and human rights law over the last half of the twentieth century represents an attempt by the international community to limit such violence.¹² Terrorism is a violation of international law and must be combated within the framework of the international rule of law, in particular international human rights law, refugee law, and humanitarian law.¹³ The legal sanctioning of human rights violations undermines the rule of law and creates enabling environments for vicious and militant networks that prosper in oppressive systems of governance.¹⁴ To suggest that the security imperative requires 'a

¹¹ EUMC (2006) Muslims in the European Union - Discrimination and Islamophobia, p. 3.

¹² Club of Madrid (2005) Towards a Democratic Response, Volume III, p. 27.

¹³ Resolution 1456 (2003) Adopted by the United Nations Security Council at its 4688th meeting, on 20 January 2003

¹⁴ Club of Madrid (2005) Towards a Democratic Response, Volume III, p. 23.

compromise' is to misinterpret the nature of fundamental rights in the European Union and fails to recognise the essential contribution of respect for fundamental rights to increasing security for the whole of society.

A whole range of human rights are potentially impacted by counter-terrorism measures including the prohibition against torture, right to fair trial, prohibition of arbitrary detention, the right to leave one's own country and to seek asylum, freedom of religion, expression and association, and the right to privacy. Ethnic and religious minorities are particularly vulnerable to these human rights abuses, as well as direct experiences of discrimination, such as the use of racial profiling. Such impact is not inevitable and it is possible to take counter-terrorism measures that do not impact on fundamental rights.

The so called 'balance' of rights which is currently so hotly debated is not so much between particular rights, such as for example privacy and security, but in effect is proving to be an unjustified and unnecessary trade-off between the rights of minorities and the majority population.

The framework of fundamental rights provides the parameters for a balanced, objective and transparent approach to the design, implementation and evaluation of counter-terrorism measures respectful of the rights of all.

Consequently ENAR calls on the European Union and its Member States to:

- Fully implement the *Guidelines on Human Rights and the Fight against Terrorism*, adopted by the Committee of Ministers of the Council of Europe on 11 July 2002.
- Conduct an equality and human rights audit of the European Union Action Plan to combat terrorism.
- Enhance the role of impact assessment, and in particular the fundamental rights impact assessment in the design of any new counter-terrorism initiatives.
- Avoid any rhetoric which suggests that there is a balance to be struck between fundamental rights and security.
- Ensure the legal status of the European Charter of Fundamental Rights in any initiative on the future of Europe.

3. Counter-terrorism measures must not have a disproportionate impact on ethnic and religious minorities

As a result of the fight against terrorism certain communities have become increasingly vulnerable to racism and discrimination. According to ENAR's Shadow Report for 2005:

"Muslims and immigrants, especially asylum seekers, are often the main targets of antiterrorism measures. However, the nature of stereotyping and racial profiling means that many ethnic and religious minority groups are affected by these supposedly targeted policies."¹⁵

Evidence from a number of research studies and civil society organisations demonstrates that the heightened security context since the events of 11 September 2001, has contributed to experiences of direct and indirect discrimination by ethnic and religious minorities in Europe. In particular Muslim communities, and

¹⁵ ENAR (2006) European Shadow Report 2005, p. 29.

those perceived as being from the Muslim communities have been amongst the most vulnerable. Non-Muslims in western societies are often unaware of the challenges facing Muslims in Europe today. It is important that Muslim communities do not become triple victims – first of terror attacks; then of a backlash from wider society and then of policy responses to these attacks.¹⁶

Some of the recent developments in the ‘fight against terrorism’ have directly mandated discrimination, while contributing to a context of increasing acceptability of prejudice and intolerance. One of the most serious manifestations of direct discrimination is the growing phenomenon of **racial profiling**.

Evidence from ENAR members indicates that the official sanctioning of racial profiling,¹⁷ and the de facto implementation of such approaches, particularly in the context of counter-terrorism measures, is increasingly problematic for ethnic and religious minority communities. While the extent of racial profiling is difficult to ascertain given the lack of data and the fact that racial profiling has not been sufficiently considered by either researchers or policy-makers, the ENAR Shadow Reports demonstrate racial profiling as a widespread practice in the European Union. Racial profiling is a direct derogation of the principle of non-discrimination and undermines the enjoyment of fundamental rights. Practices which previously would have been unjustifiable are increasingly identified as an ‘acceptable’ price to pay for security.

Racial profiling undermines the rights of individuals, contributes to the exclusion and demonisation of particular communities, and has proved an ineffective security strategy. Terrorists come from all walks of life, and actions which target individuals and communities on the basis of race or religion, or proxies such as nationality, place of birth or residency status, divert the attention of police and security personnel and actually contribute to heightened insecurity. In addition such measures serve to alienate communities with whom police and security officials need to have strong links.

The Council of Europe’s Commission on Racism and Intolerance (ECRI), in its General recommendation No. 8 on *Combating Racism While Fighting Terrorism*, has stressed “in particular that the fight against terrorism should not become a pretext under which racism, racial discrimination and intolerance are allowed to flourish”.

Consequently ENAR calls on the European Union and its Member States to:

- Implement general Policy Recommendation No. 8 of the European Commission against Racism and Intolerance on *Combating Racism while Fighting Terrorism*, adopted in June 2004.
- Conduct an impact assessment of all existing and new measures with regard to their direct and inadvertent effect on ethnic and religious minorities.
- Undertake actions to restore the confidence of minority communities who have perceived themselves to be the victims of arbitrary policing and security practice.

¹⁶ EUMC (2006) Muslims in the European Union - Discrimination and Islamophobia, p. 4.

¹⁷ For example a European Council Recommendation of 28 November 2002 on the development of terrorist profiles, while explicitly excluding the use of race or ethnicity, includes criteria such as nationality, travel document, and place of birth.

- Put in place accessible, confidential and independent complaint mechanisms and provide supports to civil society organisations to assist individuals in making complaints.
- Adopt a clear legal standard outlawing the use of racial profiling in all circumstances.
- Ensure effective monitoring, including ethnic monitoring, of all police, security and immigration practices, particularly those where discretion may be exercised, in order to identify profiling practices.
- Mandate the European Fundamental Rights Agency to continue the work of the EUMC in monitoring the situation of ethnic minorities in Europe, and in particular the situation of Muslim communities in the context of the fight against terrorism.

4. Anti-racism is a key element in counter-terrorism strategies

While counter-terror strategies which disproportionately impact ethnic and religious minority communities are an abuse of fundamental rights, as well as ineffective and counter-productive, anti-racism strategies can serve to support the fight against terrorism. Effective measures to combat discrimination, enhance integration, community cohesion and inclusion, and encourage broader respect for diversity, would undermine the context in which terrorist acts are identified as possible. As recognised in the European Union action plan effective integration is a pre-requisite for prevention of terrorism; integration is a two way process which involves both majority and minority populations, and which is not possible where discrimination undermines the inclusion of ethnic and religious minorities. The damage to community cohesion that results from policies that are not firmly grounded in the standards of fundamental rights and anti-racism undermines the fight against terrorism, alienating communities who are essential partners in effective counter-terrorism strategies.

The nature of the current debate on terrorism has contributed to a context of increasing prejudice, and in particular rising incidents of islamophobia in Europe. As the ENAR Shadow Report for 2005 concluded: "The effect of terrorism and counter terrorism measures have trickled out into the general public as is demonstrated by a Danish poll in the Copenhagen Post, which revealed that more than one in four Danes said they had become more suspicious of Muslims."¹⁸ Politicians, opinion leaders and the media have a particular responsibility with regard to the destructive tone of public debate in recent years.

Consequently ENAR calls on the European Union and its Member States to:

- Ensure the effective implementation of the European anti-discrimination framework (Council Directive 2000/43/EC and Council Directive 2000/78/EC), including extending the provision of that legislation to cover the actions of the police and security services. The European Commission should urgently take action against those Member States who have not fully implemented the existing framework, and propose new legislation to extend the protection available to the grounds of discrimination beyond race, and in particular to enhance protections against religious discrimination.
- Abrogate Article 3.2 of Council Directive 2000/43/EC, which provides an unacceptable derogation to the principle of non-discrimination, allowing

¹⁸ ENAR (2006) European Shadow Report 2005, p. 29.

'any difference of treatment' arising from nationality and the legal status of third country nationals;

- Extension of the protection against discrimination on the ground of nationality provided by the Treaties to every person living in the territory of the European Union;
- Undertake activities with the media, and public awareness strategies, to address increasing levels of prejudice and in particular misperceptions concerning Europe's diverse Muslim communities. The current 2007 European Year of Equal Opportunities, and the forthcoming 2008 European Year of Intercultural Dialogue present particular opportunities in this regard.
- Demonstrate timely leadership in the context of terrorist incidents in order to prevent any 'backlash' experienced by Muslim communities or those perceived to be from a Muslim community.

5. Effective counter-terrorism is the result of engagement and participation with all communities

Engagement and participation by all communities in the design, implementation and monitoring of counter-terrorism strategies is essential. There is a real need for enhanced transparency in decision making and a public debate on the costs and benefits of particular security strategies. Particular attention must be paid to enhancing engagement with ethnic and religious minorities who experience direct fallout from some of these practices, and in particular with Europe's diverse Muslim communities.

It is also crucial that the government, police and security services build relationships with local communities in order to enhance the flow of information and the effectiveness of security measures. Without the cooperation of communities and individuals existing strategies will remain limited in their effectiveness.

While it may be necessary to limit the public availability of certain information in the implementation of counter-terrorism measures, this approach should be limited to narrowly defined areas with clearly justifiable criteria and be proportionate to the aims and objectives of the specific measure. Political and strategic decisions with regard to the direction of counter-terrorism measures must be openly debated and subjected to appropriate levels of scrutiny.

Consequently ENAR calls on the European Union and its Member States to:

- Undertake concrete measures to assure all Muslim communities that the fight against terrorism is not a war on Islam, including by avoiding terms such as 'Islamic terrorism' which imply an inherent link between Islam and terrorism.
- Provide for fora in which ethnic and religious communities can discuss and bring forward concerns with regard to the direction of counter-terrorism policy.
- Adopt the highest standards with regard to policing multiethnic societies, such as the *Recommendations on Policing in Multi-Ethnic Societies*, published by the Office of the High Commissioner on National Minorities, of the Organisation for Security and Cooperation in Europe (OSCE) in February 2006.
- Ensure a rigorous public debate on the future direction of counter-terrorism measures, and take appropriate action to ensure transparency in decision-making.

- Support NGOs and civil society organisations which facilitate the participation and support ethnic and religious communities.