

Anti-Terrorism and Racism: The Impact of EU and UK Policy on Black and Minority Ethnic Communities *UKREN Briefing Paper*

Introduction

The last five years have seen the implementation of various 'anti-terror' measures that have strong implications for 'race relations' across Europe. The initial response to the shock of September 11 was a wave of counter-terrorism measures that focused on investigation and prosecution. Since the Madrid and London bombings, there has been a shift to include more socially sensitive measures to address the prevention and restriction of terror activities. Concern has been expressed in Britain, as it has across Europe, about the impact of both these strands of counter-terrorism measures on black and minority ethnic communities. The security agenda has not only become increasingly racialised but has raised questions over its effect on human rights and civil liberties. Likewise, whilst there may be benefits gained from the increased focus on 'integration' following the Madrid and London bombings, its close relationship to the security agenda has caused concern among community and anti-racist organisations both in the UK and in other Member States.

The objective of this briefing paper is to:

- (1) **summarise** the key anti-terrorism provisions emerging recently from the UK and the EU; and
- (2) **highlight** the concerns expressed by a wide range of individuals and organisations – from individual barristers, to anti-racist and civil liberties organisations – around the links between the counter-terrorism agenda and racism.

1a. Counter-Terrorism Legislation in the UK

The Terrorism Act 2000

This piece of UK legislation, which predates the September 2001 attacks on New York, created the distinctive system of arrest, detention and prosecution for 'terrorist offences' that operates today. Most importantly, the Act:

- Defines terrorism as 'the use or threat (of violence or serious damage to property) designed to influence the government or to intimidate... (any) section of the public... for the purpose of advancing a political, religious or ideological cause'.
- Bans terrorist organisations and creates the offence of 'directing a terrorist organisation'
- Makes it illegal to possess items, or collect information, for terrorist purposes.
- Makes it illegal to fund terrorism or to incite terrorism both within and outside the UK.

Within the context of the Act, which passed into law on 19 February 2001, the following additional powers have been granted to the police in their handling of suspects:

- wide-ranging powers of arrest without warrant;
- carrying out stop and search without the prerequisite of 'reasonable suspicion';
- denying a detainee access to a lawyer for up to 48 hours;
- holding a detainee in custody for up to 14 days without charge;
- when preparing a case for court, shifting the burden of proof from the prosecution to the accused in relation to certain offences.

The Anti-Terrorism Crime and Security Act 2001

Having declared the existence of a “public emergency” following the events of 11 September, the UK government quickly brought in this piece of legislation. The 2001 Act extends the powers of the state in defining, identifying, pursuing and holding terrorist suspects. To do this it:

- Introduces vague offences, such as having ‘links’ with a member of an ‘international terrorist group’.
- Allows the forfeiture of terrorist property and sanctions confiscation orders for terrorist assets and funds.
- Gives the police greater powers to use fingerprinting and searches to identify terrorist suspects and wider powers, to remove headgear, etc., when taking photographs of terrorist suspects.
- Permits indefinite detention of foreign nationals who are certified as ‘suspected international terrorists’. When ruled incompatible with the right to liberty under the European Convention of Human Rights and freedom from discrimination by the Law Lords in December 2004, it was replaced by ‘control orders’ under the Prevention of Terrorism Act 2005 (see following section).

The Prevention of Terrorism Act 2005

Passed in March 2005, the Act:

- Allows Ministers to issue ‘control orders’ to restrict the movement, activities, association and communication of anyone reasonably suspected of involvement in terrorism-related activity, through, for example, house arrest, tagging and curfews, with only limited oversight by the courts.
- Allows the courts to issue more restrictive ‘control orders’ involving a derogation from Article 5 of the European Convention on Human Rights (ECHR).
- Excludes safeguards that enable people to exercise their right to a fair trial before punishment is imposed, including: the right to be informed promptly, and in detail, of the nature of the accusations against oneself; the right to be present in court when allegations are made; and the right to be presumed innocent until proven guilty ‘beyond reasonable doubt’.

The control order powers, approved initially for 12 months, were renewed in March 2006.

The Terrorism Act 2006

This latest anti-terrorism measure was drafted in the aftermath of the London bombings of July 2005. It creates further offences that can be defined as ‘terrorism’, and extends the length of time a detainee may be held without charge. Its purpose is to give the police and other law enforcement agencies ‘all the tools they require to tackle terrorism and bring perpetrators to justice’. The Act:

- Makes indirectly encouraging terrorism – e.g. by the ‘glorifying’ of terrorism through speech or publication – an offence.
- Allows non-violent organisations to be banned if deemed to ‘glorify’ terrorism.
- Criminalises attending a place where ‘terrorist training’ is taking place.
- Extends pre-charge detention of people held under anti-terrorism legislation from 14 days to 28 days.

1b. The European Dimension to the ‘Fight against Terrorism’

EU counter-terrorism measures are strongly geared towards encouraging a common approach from and co-operation between all Member States on how to tackle the threat of terrorism. They focus in particular on information sharing, joint border controls, joint operations and the simplification of procedures to move suspects across borders for trial. The measures translate nationally in the UK mainly in the areas of investigation and prosecution, most notably through the 2002 European Arrest Warrant and the 2005 Data Retention Directive.¹ The principal measures – which range from Framework Decisions to Action Plans to Strategies – are the EU Framework Decision on Countering Terrorism (2002) and the Counter-Terrorism Strategy from the European Commission (2005).

¹ The 2005 *Data Retention Directive*, introduced during the UK Presidency of the EU, requires all phone and internet providers to store phone calls and internet communications for up to 2 years, so that criminal network transmissions and electronic contacts can be tracked during police investigations.

UK Presidency of the EU

At the time of the London bombings and in their immediate aftermath, the UK held the Presidency of the European Union. As a result, it was able to quickly push ahead with the EU's plans on counter-terrorism by introducing new pieces of legislation, including the 2005 Data Retention Directive. The UK Presidency also called for the European Parliament to approve identity documents, the use of passenger data by police, and increased use of CCTV cameras.¹ The UK Presidency also brought in the EU's latest and perhaps most influential Counter-Terrorism Strategy (see above).

¹ 'Liberty and Security: Striking the Right Balance', A Paper by the UK Presidency, 7 September 2005.

2002 – EU Framework Decision on Countering Terrorism

Main Provisions

- Member States have the competency to prosecute and investigate terrorist acts in any other Member State.
- The European Arrest Warrant, transposed into UK Policy as the 'simplified procedure' embodied in the UK Extradition Act 2003, makes it easier for people to be extradited to other Member States.

2005 – EU Counter-Terrorism Strategy (December)

Main Priorities

- 'Preventing' the radicalisation and recruitment of terrorists through the Strategy for Combating Radicalisation and Recruitment.
- 'Protecting' against terrorism through increased security and control of borders and transport.
- 'Pursuing' and investigating suspected terrorists internationally by the specific targeting of their funding and communication networks, and the aim of bringing cases to court.
- 'Responding' more effectively to terrorist attacks.

2. Impact of Counter-Terrorism Measures on Race Equality in the UK

Counter-Terrorism and Human Rights

Counter-terrorism measures can lead to a situation where there are fewer safeguards for suspects than under the ordinary criminal law. Concern has been expressed as to their impact on:

- Freedom of expression – voicing opinions in speech or writing, which may be interpreted as a threat to national security, could become a criminal offence.
- Freedom of assembly and association – certain groups could be banned if deemed a threat to national security.
- Right to liberty and security of the person – for example, increased use of house arrest, tagging, being held without trial.
- Right to respect for private and family life, including the rights of the relatives of people on whom counter-terrorism restrictions have been imposed – by means of increased profiling, phone tapping.
- Right to be free from torture or other ill-treatment – EU countries have co-operated in obtaining information through torture carried out on non-European soil.²
- Right to fair trial.³

Ethnic Profiling, Islam and 'Visible Minorities'

Someone who holds and professes an 'abusive interpretation of Islam' is considered to be a significant terrorist threat to the safety and security of EU countries.⁴ One by-product of this definition of a threat, both in Europe and in the UK, is the additional use of control and profiling, including ethnic profiling, which occurs, and which is likely to disproportionately impact on Muslim communities. The Home Office's *Stop & Search Action Team Interim Guidance* states that: 'There may be circumstances where it is appropriate for officers to take account of a person's ethnic background when they decide who to stop in response to a specific terrorist threat (for example, some international

² Amnesty International Report, *United Kingdom – Human Rights: a Broken Promise*, EUR 45/004/2006, p. 18.

³ For a more detailed analysis of the effect of counter-terrorism measures, see the Amnesty International Report: *United Kingdom – Human Rights: a Broken Promise*.

⁴ Communication from the Commission to the European Parliament and the Council on: *Terrorist Recruitment: Addressing the factors contributing to violent radicalisation*, Brussels, 21.9.2005, COM (2005) 313 final, p. 2.

terrorist groups are associated with particular ethnic groups, such as Muslims).’ This is reflected in the increasing numbers of Asian individuals being stopped and searched over the last few years (Statewatch 2005 vol. 15 no 1), and has added to the disaffection experienced not only by those who already think themselves to be disproportionately the subject of police attention, but also those who are at odds with the UK government over aspects of its foreign policy, particularly in respect of Iraq.

Impact of Counter-Terrorism Policy on the Non-Profit Sector

The EU’s recent Terrorist Finance Strategy requires Britain along with all other Member States to investigate the financial activities of bodies in the non-profit sector.⁵ Given the vague definition of terrorism (Section 1 of the Terrorism Act 2000), this puts certain non-profit organisations at risk of being investigated in relation to their perceived support of terrorism (for example if they support protest movements abroad).

Impact of Counter-Terrorism Policy on the Integration Agenda

At the same time, ‘integration’ is being promoted on both the UK and the EU agendas as a high-value strategy in the ‘fight against terrorism’. Education, integration policies, interfaith dialogue and intercultural understanding are being promoted in the attempt to prevent further radicalisation of disaffected individuals. Whilst organisations working with ethnic minority communities might have much to gain from an increased focus on integration, linking ‘integration’ with national security runs the risk of undermining the positive effects of integration efforts by simultaneously placing certain communities in the spotlight as suspicious and a ‘threat’. It is therefore important to refer to the interpretation of integration defined in the Common Basic Principles on Integration, that is, as a two-way process between migrant communities and host societies. These were adopted and signed up to by all EU Member States, including the UK, in December 2004.⁶

Addressing Radicalisation

As part of the 2005 EU Counter-Terrorism Strategy, an EU Strategy for Combating Radicalisation and Recruitment to Terrorism was launched, building on earlier European Commission Communication on terrorist recruitment.⁷ This Strategy, which outlines a range of measures to be implemented by all Member States, is rooted in the December 2004 European Council when the issue of Islam and Muslims in Europe was placed on the agenda. As highlighted by a number of civil liberties groups, addressing ‘radicalisation’ within any ‘group’ must take into account the wider setting in which these groups are contextualised. Certain ethnic minorities, refugees, asylum-seekers and migrants have been associated with terrorism, often in unwarranted and sensationalist ways, by the media in Europe generally and in the UK specifically. When this is coupled with the discrimination and social exclusion faced by these communities, their reactions to such associations are factors that need to be addressed if national governments and EU institutions wish to have any impact on countering the radicalisation of certain individuals. It is therefore important to engage with national and European government strategies seeking to prevent or counter radicalisation to ensure that such stressors are not forgotten.

Promoting a Sensitive Approach to Counter-Terrorism

The EU is working on a public communication lexicon that blacklists the term ‘Islamic terrorism’. The ‘non- emotive lexicon for discussing radicalisation’, which aims to endorse a linguistic code of conduct sensitive to the causes of radicalisation, should be submitted to EU leaders who will meet in June.⁸

ENAR Activities

ENAR is organising a meeting of the Anti-racism and Diversity Intergroup of MEPs (Members of European Parliament) on 6 June 2006 to push forward the anti-racism agenda within counter-terrorism measures.

ENAR will be also developing a general position paper on counter-terrorism, which will be circulated to UKREN members.

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⁵ Strategy on Terrorist Financing adopted by the European Council on 16/17 December 2004 (16089/04).

⁶ The Common Basic Principles on Integration (CBP) adopted by the EU Council in November 2004, Document 14615/04 of 19 November 2004.

⁷ See footnote 5.

⁸ www.euobserver.com/9/21384/?rk=1

Links and Useful Docs

EU Action Plan on Combating Terrorism and EU Counter Terrorism Strategy (2005)

Available on: http://ue.eu.int/cms3_fo/showpage.asp?id=631&lang=en&mode=g

European Commission (2005) *Terrorist recruitment: addressing the factors contributing to violent radicalisation*
European Commission Communication

Available on: http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005_0313en01.pdf

The European Commission Communication outlining the its programme on terrorism over the next six years is available on: www.europa.eu.int/prelex/detail_dossier_real.cfm?CL=en&DosId=192705

Council of Europe Convention on the Prevention of Terrorism 2005.

Available on: http://www.icj.org/IMG/pdf/CoE_Convention-2005.doc.pdf

The European Arrest Warrant Website includes main documents on European counter terrorism measures. Available on: www.eurowarrant.net/

Amnesty International (2006) *United Kingdom – Human Rights: a Broken Promise*

Available on: www.web.amnesty.org/library/index/engneur450042006

Statewatch (2005) *UK: Stop and Search: Ethnic injustice continues unabated*, Statewatch Analysis Vol 15, no1

Available on: www.statewatch.org/news/2005/apr/uk-stop-and-search-2005.pdf.

Council of Europe (2005) *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom for the attention of the Committee of Ministers and the Parliamentary Assembly*

Available on: www.statewatch.org/news/2005/jun/coe-uk-report.pdf.

Dittrich M (2005) *Muslims in Europe: Addressing the Challenges of Radicalisation* European Policy Centre Paper no 23, March 2006

Available on: http://www.theepc.be/TEWN/pdf/516768587_EPC%20Working%20Paper%2023.pdf

Centre for European Policy Studies (2005) *The EU's Fight against International Terrorism – Security Problems, Insecure Solutions*, Policy Brief No. 80/July 2005

Available on: www.libertysecurity.org/article340.html