Ethnic Profiling, ID Cards and European Experience.

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The Justice Initiative has been working to document and address *ethnic profiling* for four years. In many of the European countries that we have been working, citizens are required to carry ID cards, in many contexts this directly drives ethnic profiling. Europe's rapidly-expanding immigration and border control databases (to which ID databases may eventually be linked) offer a new information resource for law enforcement and counter-terrorism as well as immigration control, and it may well be tempting to seek to exploit them through the use of profiling. Although these patterns are not inevitable, they present real risks.

Since the 9/11 attacks in New York, 32 percent of British Muslims report being subjected to discrimination at airports, and stops and searches of British Asians increased five-fold after the June 2007 attempted bombings in London and Glasgow. Identity checks have been conducted on 11 year olds at German mosques by police carrying machine guns. A data mining exercise in Germany trawled through the sensitive personal data of 8.3 million people—without finding a single terrorist. Muslims, Roma, and migrant groups across Europe have reported feeling that they are all considered suspicious and have to constantly prove their innocence or legal right to stay. From street stops to airport searches to data mining, ethnic profiling affects many thousands of people and stigmatizes entire communities. Widely practiced but little scrutinized, ethnic profiling is a form of discrimination that is illegal in most circumstances.

Before talking about our specific concerns, I would like to touch on the definition of "ethnic profiling" as it is our experience that there is a lack of understanding as to what practices constitute profiling. Profiling is often understood as the use of ethnicity or race

as the **sole** or **exclusive** criterion for suspicion, or as the use of an explicit ethnic profile. This narrow definition fails to capture many practices that result in profiling. In fact, many profiling practices are not explicit, and they may or may not result from racist intent on the part of individual officers. Indeed, many officers are unaware of the degree to which ethnic stereotypes drive their subjective decision-making. Any single decision to stop, check ID, question and search a person, or select a traveler for extra scrutiny may appear reasonable. It is when law enforcement strategies are monitored for patterns that a disproportionate focus on minorities can appear. Ethnic profiling remains persistent and pervasive precisely because it reflects the habitual and subconscious use of negative stereotypes—stereotypes that are deeply-rooted in the institutional culture of law enforcement and in the broader general public across Europe.

We define ethnic profiling as the use by law enforcement officials of racial, ethnic, national origin or religious stereotypes in making law enforcement decisions to stop and search, check identity documents, arrest, mine databases, gather intelligence and other techniques. We define law enforcement broadly to include police officers, security officials, border and immigration officers. This broader definition **does not** mean that law enforcement is prohibited from ever using ethnicity, national origin or religion, such as in specific "suspect descriptions" or criminal profiling. When based in specific and up-to-date intelligence, ethnicity and other factors may be important and a legitimate aspects of any investigation.

Police across Europe have long targeted minorities for heightened suspicion in the course of every day policing, which helps explain the intensified use of ethnic profiling in the context of counter-terrorism policies and practices. Yet there remains a lack of quantitative data documenting with precision current patterns of ethnic profiling due to many European governments sharing a misperception about what is permitted under their data protection laws, as well as rejecting the need to collect aggregated ethnic statistics due to a perceived incompatibility with notions of citizenship.

Our STEPSS or "Strategies for Effective Police Stop and Search" project, focusing on Bulgaria, Hungary and Spain, has attempted to address the paucity of data on police

stop patterns in European countries, outside the UK. In Spain, the results showed significant disproportionality, for example, Moroccans were between 6.7 and 10 times more likely to be stopped than Spanish people, Romanians (mostly of Roma origin) were between 3.8 and 10 times more likely to be stopped than Spanish people across the different pilot sites. The results show that in the pilot sites in Hungary those perceived to be of Roma ethnicity were on average 3 times as likely to be stopped as ethnic Hungarians. What was even more stunning about the Hungarian results was the sheer number of ID checks that Hungarian police officers do – on average they stop 161 people per thousand of the population. To put this into context, the rate for the UK is 20 stop and searches per thousand of the population. One Hungarian police officer explained, "*traditionally, ID checks have been used by officers to show that they were doing something during their shifts. The idea was that the more you do – the harder you are working.*" No thought has been given to the productively of these ID checks or the inconvenience to citizens, who are disproportionately Roma.

Surveys in Bulgaria and Hungary in 2005 found profound differences in the experiences of Roma once they have been stopped. In Bulgaria, for example, 20 percent of Roma who were stopped by police experienced insults, 14 percent experienced threats, and five percent experienced the use of force. Compared to ethnic Bulgarians, where the respective rates were three percent, five percent and one percent. The following quote from a young Roma man, appears to be all too typical for Roma across Europe:

> *I was once stopped by the police for drugs … I was like "Wait a minute, why don't you go and catch someone <u>with</u> drugs. Why do you check me?" I was almost about to cry, but the police said "Lift up your sleeves and don't talk too much, you dirty gypsy [otherwise], I'll put you in the trunk [of the police car]."*

Raids represent perhaps the most intrusive tactic that law enforcement can use in policing communities. When law enforcement selects the targets for raids based on stereotypes associated with ethnic or religious groups, or when raids are based on evidence in relation to criminal activities of just individuals within that community then it ethnic profiling. Romani camps have often been the target of police raids in many

European countries either prompted by suspected criminal behaviour of one or two suspects or as part of preventative measures simply checking identity cards on the grounds that criminality is rife in Roma settlements. In May, the treatment of Roma in Italy hit the headlines when the Italian government passed an "emergency" decree granting state and local officials extraordinary powers to deal with "nomad community settlements." Commissioners were empowered to take a census, including fingerprinting and photographing inhabitants of the camps—a clear singling out of an ethnic group for differential treatment. Public statements by leading politicians, as well as court rulings, called for and upheld these measures on the grounds that "all Roma are criminals". This measure and the fingerprinting of all persons in camps, including children, provoked an outcry and comparisons to ethnic registration practices of the World War II era. These policies were accompanied by a marked increase in police abuse against Roma both in the camps and in public settings in towns. In Germany, police have used preventive powers to conduct mass identity checks outside Germany's major mosques; some operations conducted by police in riot gear last for hours. Raids have also been widely used to target Muslims, particularly observant and conservative Muslims, in Italy and France. The raids we have described here, often lack a basis in specific evidence, and some appear designed to impact public perceptions rather than having any demonstrable operational rationale.

We don't have comparative data on the frequency of stops across Europe to determine whether having ID cards results in greater rates of stops but it seems likely that the introduction of ID cards in Britain will lead to an increase in stop and search and this will disproportionately impact on minority groups. As the Hungarian experience shows, where officers have vast discretion to check ID, rather than taking the time to develop individualized suspicion, they may fall back on stereotypes about who is worth stopping which results in the powers being used much more extensively against minority communities.

We also have specific concerns about the British National Identity Register or database which will house the identity information. Europe has a fast-expanding network of immigration and border control databases, which includes the Visa Information

System, the Schengen Information System and the asylum database, Eurodac. As well as being used for immigration control, they provide a resource for crime and counter-terrorism investigations. Reportedly, a proposed entry-exist system will enable both border and non-border identity checks based upon biometric data, although it is not clear under what circumstances such searches would be permitted. Furthermore, it is anticipated that the European Commission will shortly call for a database of residence permits and passports as well.

This web of information raises ethnic profiling concerns at several levels. The first is the possibility that these databases would themselves be data mined using ethnic or religious profiles. Data-mining is the process by which large databases of personal information are subjected to computerized searches using a set of specific criteria. In law enforcement, these criteria are generally based on the common characteristics of persons responsible for past offences and often include ethnicity, national origin and religion. The data is used to narrow down a set of targets for further investigation. Data mining has been explored with a specific interest in its potential as a tool to identify terror "sleeper cells" as was the case with Germany's data mining effort after discovery of the Hamburg cell in 2001. Called the *Rasterfahndung*, this massive and costly data mining exercise failed to turn up a single terrorist. The experience has been similar in the US, where immigration data was used to identify tens of thousands of people for scrutiny as potential terrorists, but in the end did not result in one charge on terrorism offences. It is noteworthy that Germany's constitutional court has ruled that, in the absence of a concrete danger, this technique constitutes an unwarranted intrusion on personal privacy.

Immigration databases may also feed into profiling by police within national borders. Many police across the EU use ordinary stops and identity checks in domestic immigration enforcement. This can be quite intensive when political authorities order strict enforcement of national immigration laws, and police explicitly profile people who look foreign as they attempt to identify illegal migrants. As one senior Spanish officer explained to us: "We stop foreigners to see if they are illegal; how can we enforce the [immigration] law if we don't stop people who <u>look</u> like foreigners?" The possibility of

checking persons against European databases will likely heighten this trend and provide another argument for the reasonableness of singling out minorities for police attention—to check them against the entry-exit system.

Immigration-driven profiling by national police is facilitated by outdated immigration laws that fail to reflect the reality of increasingly multi-ethnic societies. It is particularly disturbing that the use of appearance as valid grounds for enforcing immigration within national borders has been upheld in the Spanish Constitutional Court as recently as 2001. A dissenting judge noted that using race as a proxy for nationality makes little sense as Spain's "already a multi-racial society."

There is a troubling gap that exists in current EU immigration law in the protection of third country nationals – in particular, Article 3.2 of the Racial Equality Directive which allows differential treatment on grounds of nationality. While immigration decisions have to be made on the basis of nationality, this broad exclusion of nationality discrimination leaves a significant gap in protection and can 'mask' forms of discrimination based on race or ethnic origin as supposedly legitimate differences based on nationality. When combined with the fact that current EU anti-discrimination law does not apply to criminal justice and policing, these shortfalls potentially permit the kinds of profiling that I have described. It is even more troubling when one adds to this equation the inadequate state of data protection standards for law enforcement cooperation. The European Data Protection Supervisor has noted that existing legal standards are too general to be effective in law enforcement, and that "the lack of common rules could create a situation in which even minimum standards are not observed."

The UK is not part of the Schengen System and so does not have access to the VIS or other systems that I have described. But the UK has similar databases, such as its own PNR, Passenger Name Recognition database. It is not inconceivable through that in the future, the UK will negotiate law enforcement access to the growing array of EU databases or that the British National Identity Register would be shared with other EU countries through reciprocal agreements. The phased roll out of Identity Register has

commenced with ID cards for non-EEA migrants on student or marriage visa, as the government considers these immigration categories as "most risk of abuse." Thus just as immigration databases have fed into profiling by police within national borders across Europe, the same dangers may arise in the UK.

This is a very brief overview of patterns of ethnic profiling emerging across Europe and the potential danger of profiling driven by ID cards and databases. There is no evidence that ethnic profiling works, considerable evidence that it does not, and some disturbing indications that it may actually hamper law enforcement. When police or immigration officials act on prejudice, they blind themselves to real suspicious behaviors. Profiles are both under- and over-inclusive; that is, they risk being too narrow and missing real suspects or too broad, in which case they are expensive to apply in terms of manpower and target large numbers of completely innocent people. More broadly, profiling feeds and aggravates existing mistrust and results in hostility and lack of cooperation among the very communities where support is most needed for fighting crime, terrorism and immigration control. When border authorities and police continue to profile different ethnicities, nationalities and religions across Europe, they are, wittingly or not, contributing to a growing sense of marginalization in minority and migrant communities. Profiling stigmatizes entire communities and legitimizes public discrimination, straining inter-ethnic relations and social cohesion.

To end on a more positive note - the evidence that ethnic profiling is in fact widespread across Europe is beginning to create a momentum to address it. The STEPSS project, that I mentioned earlier, has demonstrated that when ethnicity is removed from law enforcement decision-making, disproportionality can be reduced and productivity increased. One of the municipal police forces in Spain participating in the pilot project has reduced the number of stops by two thirds, brought down disproportionate stops of minorities, and doubled the rate at which stops produced positive outcomes, through increased supervision and community monitoring of stops. We are now starting tentative conversations about possibly replicating the initiative in the Netherlands, Ireland, and in Sweden. We are also working with the European Parliament to raise the issue. UK MEP Baroness Ludford, has tabled a

resolution to ban profiling and is rapporteur on a parliamentary report on ethnic profiling. As home affairs matters fall outside of the Parliament competency, this report is likely to focus on profiling in immigration and border control. We hope that it will call for a strengthening of data protection safeguards and greater oversight of the use of databases by law enforcement.

The risk of increased ethnic profiling due to the introduction of ID cards in Britain is not inevitable, but there are real risks. We should build on good practice instead of adopting bureaucratic controls that can not be proven to assist in fighting crime or terrorism in Britain.

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