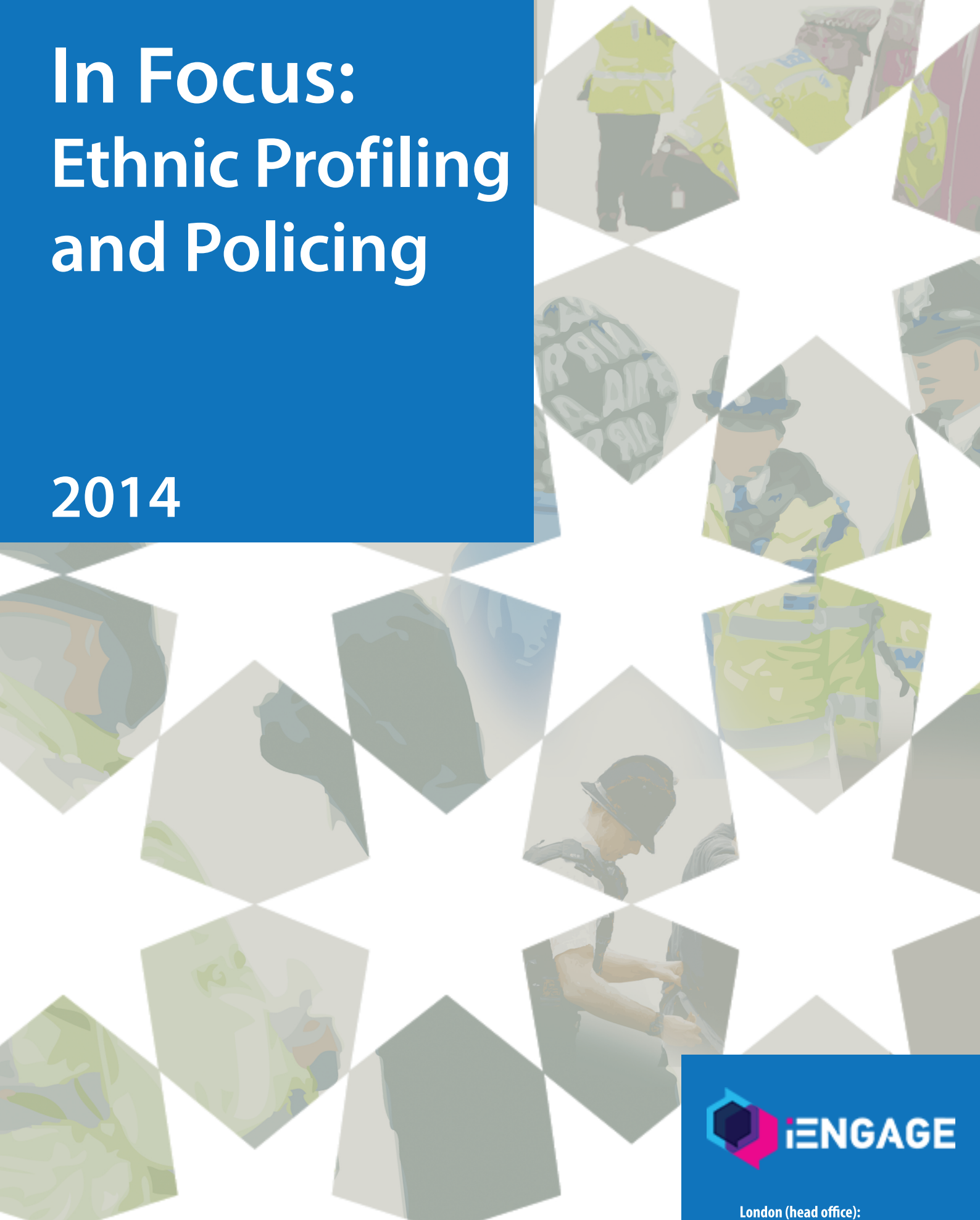


In Focus: Ethnic Profiling and Policing

2014



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In Focus: Ethnic Profiling and Policing

There has been a steady growth in research output on the impact of counter-terrorism powers in relation to policing, and specifically on ethnic profiling of minorities in Europe. The UK is one of the few EU Member States which collects and regularly publishes data on the incidence of stop and search on ethnic minorities. The Home Office and Equalities and Human Rights Commission (EHRC) have regularly published in this area demonstrating the disproportionate number of stops and search conducted on Blacks and Asians in the UK.

The policy has come under serious scrutiny in recent months with the European Court on Human Rights striking down Section 44 of the Anti-Terrorism Act, 2000, thereby removing the power of police officers to exercise stop and search without reasonable suspicion. The change was later codified in law with the passing of the Protection of Freedoms Act 2012 and the abrogation of Section 44 with Section 47a, which introduces reasonable suspicion as a requirement.

The Coalition government has also undertaken a large scale review of stop and search with findings published by Her Majesty's Inspectorate of Constabulary (HMIC). The Government has undertaken a review of Schedule 7 powers which permit stop and search without reasonable suspicion at ports and airports, opening a consultation on the exercise of the powers and suggested improvements. Amendments to the Schedule 7 powers have been incorporated into the Anti-Social Behaviour, Crime and Policing Act 2014, though certain amendments included in our response to the consultation have not been adopted.

Ethnic profiling is likely to feature prominently in the coming months as the HMIC report and the findings of discriminatory use against ethnic minorities prompts political action ahead of the next general election.

In this In Focus we look at the practice across Europe, the incidence of anti-Muslim discrimination, trust in policing and recommendations by the EU's human rights agencies to protect the civil, religious and political rights of European Muslims.

Definition

"Ethnic profiling" has been defined by the [Open Society Justice Initiative \(OSJI\) in its 2009 report](#) as *"the use by law enforcement of generalizations grounded in ethnicity, race, religion, or national origin – rather than objective evidence or individual behaviour – as the basis for making law enforcement and/or investigative decisions about who has been or may be involved in criminal activity."*

The practice of ethnic profiling occurs in a range of police activities including stop and search, identity checks, raids, surveillance, monitoring practices, data mining, and arrests.

In its [2012 Handbook of Good Practices](#) for reducing ethnic profiling in the EU, the OSJI criticises the [Fundamental Rights Agency's \(FRA\) 2010 guide](#) for its use of the term "discriminatory ethnic profiling" because:

"Ethnic profiling refers specifically to a form of discrimination in law enforcement; to add the adjective "discriminatory" to the term misleadingly suggests that they may be non-discriminatory ethnic profiling."

The FRA, however, continues to use this term in its [2013 training manual](#).

Ethnic profiling and policing – discriminatory, disproportionate and 'illegal'

The OSJI has repeatedly asserted, in its [2008 submission](#), 2009 report on Ethnic Profiling in the EU, 2012 handbook, as well as the [2013 International Standards on Ethnic Profiling](#), that though the European Convention on Human Rights does not contain explicit provisions on ethnic profiling, police stops and searches based on ethnic profiling can curtail fundamental rights including freedom of movement, right to liberty and security, right to privacy, the right to non-discrimination, and prevent people from exercising their right to freedom of religion.

The OSJI's 2009 report notes the [European Union Network of Independent Experts on Fundamental Rights' conclusion](#) that ethnic profiling should be considered unlawful in any circumstance:

“[T]he consequences of treating individuals similarly situated differently according to their supposed ‘race’ or 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 persons 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.”

Yet, despite the violation of human rights that ethnic profiling entails, it has become pervasive in Europe, tending to spike immediately after terrorist incidents, such as 9/11 and 7/7. The OSJI's 2012 handbook notes that rising concern with illegal immigration and border policing within the EU has also played a role in the increased use of ethnic profiling. The problem is further exacerbated by the notion of [Muslims as a ‘suspect community’](#).

Research by the European Network Against Racism (ENAR) in its [UK country report](#) last year noted, “Muslim communities report that anti-terrorism policies and legislation contribute to a wider climate of hostility, fear and suspicion towards them”.

Ethnic profiling has been systematically documented as a problem by the European Commission against Racism and Intolerance (ECRI) in its country reports on Austria, Germany, Greece, Hungary, Romania, Russia, Spain, Sweden, Switzerland, Ukraine and the UK.

The scale of ethnic profiling in the UK has been documented in reports by the Ministry of Justice and Home Office bulletins on the operation of police powers. The data, however, is not comprehensive with gaps in the availability of statistics in relation to the use of the Schedule 7 powers. The OSJI's 2009 report uses statistics published by the Ministry of Justice on stop and search between April 2007 and March 2008 and illustrates how practices have targeted persons perceived to be Muslim since 9/11 and further intensified after 7/7.

The notorious Section 44 powers were abrogated following the legal challenge, *Gillan and Quinton vs The United Kingdom*, in which [the European Court on Human Rights](#) struck down the practice as ‘arbitrary’, ‘discriminatory’ and ‘illegal’. The legal ruling led to the removal of the power to stop and search ‘without reasonable suspicion’ though this does not extend to the Schedule 7 powers to stop and search at ports and airports where the ‘reasonable suspicion’ condition does not apply.

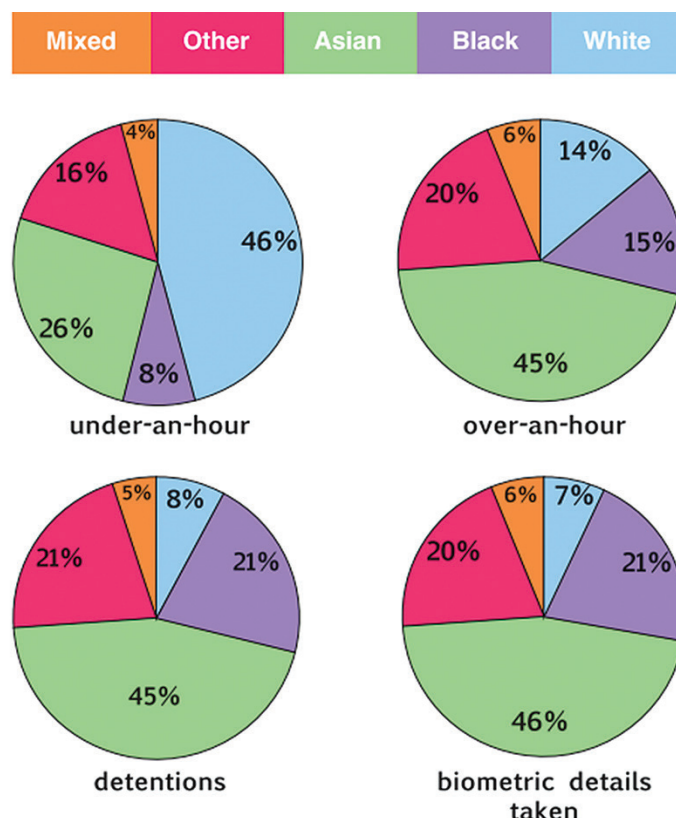
Indeed, the requirement for ‘reasonable suspicion’ is established in the [Council of Europe's Code of Police Ethics](#), adopted on 19 September 2001, declaring that “police investigations shall, as a minimum, be based upon reasonable suspicion of an actual or possible offence or crime.”

Furthermore, research undertaken by the Equality and Human Rights Commission has continuously found that Asians and Blacks are significantly more likely than white people to be stopped and searched in England and Wales.

An [EHRC briefing paper from November 2013](#) reiterates concern that Blacks and Asians are still far more likely to be stopped and searched by police in comparison to White Britons. Looking at race disproportionality and excess stops and searches during the periods 2010/11 and 2011/12, results show that in some areas Black people were 29 times more likely to be stopped and searched.

It further noted that the disproportionality of stop and searches between different ethnic groups remains “stubbornly high” considering that Asians or other ethnic minorities are still twice as likely to be stopped as White Britons.

Ethnic proportionality of Schedule 7 stop and search (2010/11)



In our [submission to the Home Office consultation on Schedule 7](#), we deduced in our calculations strong evidence of disproportionality in Schedule 7 stops, measured by our best estimates on the likelihood that a particular person of a given ethnicity is likely to be Muslim. It is clear that ethnicities corresponding with a large number of Muslims are stopped and detained more than others. According to our analysis:

- Almost 1 in 5 (22.9%) under-the-hour examinations are likely to be of Muslims
- Over 1 in 3 (35.9%) over-the-hour examinations are likely to be of Muslims
- About 2 out of every 5 detained (41.9%) are likely to be Muslim

In addition, in [experimental analysis carried out by the EHRC in December 2013](#), to assess the extent to which race disproportionality exists in stop and search powers at UK borders and examinations under Schedule 7, it found that while the total examinations at all ports and airports of Asians or 'other' ethnic minorities during the period of analysis was 46.6%, 63.5% of total examinations at airports only were on Asians and 'other' ethnic minorities. Furthermore, 65.2% per cent of examinations and detentions for over an hour at all ports and airports were of Asians or other ethnic minorities.

The findings reinforce Muslim perceptions of being singled out during air travel for stop and search and intrusive lines of questioning. Casework revealing Muslims being harassed at airports and asked questions about their religious affiliation, religious practice and political views have been documented by [human rights charity, Cage, in their Schedule 7 Stories](#).

Among recommendations proposed by the [Joint Committee on Human Rights](#) in its legislative scrutiny report on the Anti-Social Behaviour, Crime and Policing Bill was this:

"We also recommend that the revised Code should provide that records of examinations should include the self-declared religion of the person examined, if given, as well as their self-declared ethnicity."

The documentation of self-declared religion and self-declared ethnicity would allow for closer inspection of the discriminatory use of the powers against ethnic minorities and Muslims.

Ethnic profiling in the EU

Although the OSJI 2009 report and the FRA 2010 report both acknowledge that there is no comprehensive data on ethnic profiling and law enforcement practices in most of Europe, except the UK, the scale of the problem of ethnic profiling across Europe is still striking considering the available data from the FRA's EU-wide survey on minority groups' experiences of discrimination.

The EU MIDIS Survey carried out interviews with 23,500 people of an ethnic minority or immigrant background across the 27 EU Member States. Muslim respondents were surveyed in only 14 Member States in the report. The FRA's [2010 Data in Focus report on Police Stops and Minorities](#) revealed that:

- In 6 out of 10 Member States where minority and majority groups living in the same neighbourhoods were surveyed, minority respondents were stopped more often by the police in the last 12 months
- Looking at the frequency of police stops experienced by minority and majority groups in the 10 member states, those experiencing three or more police stops in a 12 month period were only represented by minorities
- Before being asked about encounters with the police, respondents were asked whether they tended or not to trust the police. 50% of respondents who were stopped by the police and did not consider it to be a result of ethnic profiling said they tended to generally trust the police whereas 27% of respondents who were stopped by the police and did consider it to be a result of ethnic profiling said they tended to trust the police – a clear connection between perceptions of discriminatory treatment at the hands of the police and overall levels of trust in policing.

The profiling of particular groups was noted in results which showed:

- In Spain, 12% of majority and 42% of North African respondents were stopped in the last 12 months
- In France, 22% of majority and 42% North African respondents were stopped in the last 12 months
- In Hungary, 15% of majority respondents were stopped in the last 12 months in comparison with 41% of Roma respondents
- In Greece, 23% of majority and 56% of Roma respondents were stopped in the last 12 months

The FRA's [2009 Data in Focus Report on Muslims](#) revealed:

- On average 1 in 4 Muslim respondents were stopped by the police in the previous 12 months, and 40% of these believed that this was specifically because of their immigrant or minority status
- Those who were stopped by the police experienced on average 3 such stops over a 12 month period
- On average 37% of Muslim respondents stopped by customs or border control in the previous 12 months believed that this was specifically because of their immigrant or minority background. In comparison, 19% of non-Muslim minority respondents surveyed in EU-MIDIS considered this to be the case.

European policy has consistently argued for reforms to reduce ethnic profiling and to address the problem of low levels of trust in policing exhibited by minority communities and people of immigrant backgrounds.

The European Commission against Racism and Intolerance's (ECRI) [General Policy Recommendation No. Eight on Combating Racism while Fighting Terrorism](#) (17 March 2004) makes recommendations to governments of Member States to:

“pay particular attention to guaranteeing in a non-discriminatory way the freedoms of association, expression, religion and movement and to ensuring that no discrimination ensues from legislation and regulations - or their implementation” including in “checks carried out by law enforcement officials within the countries and by border control personnel.”

The ECRI's [General Policy Recommendation No. 11: Combating Racism and Racial Discrimination in Policing](#) (29 June 2007) also makes recommendations to:

- clearly define and prohibit racial profiling by law
- to carry out research on racial profiling and monitor police activities in order to identify racial profiling practices, including by collecting data broken down by grounds such as national or ethnic origin, language, religion and nationality in respect of relevant police activities;
- To introduce a reasonable suspicion standard, whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion that is founded on objective criteria.

The OSJI's 2009 report and 2012 handbook recommends, in support of the European Network of Independent Experts in Fundamental Rights' 2006 Opinion as well as the European Commission against Racism and Intolerance General Recommendations, that the EU should adopt a Framework Decision.

The framework should define ethnic profiling as illegal and prohibit the use of indicators such as race, religion, ethnicity, and national origin as proxies for criminal behaviour. It also recommends that anonymous statistical data on ethnicity should be collected in order to improve insights into the scale of ethnic profiling.

Other strategies considered to reduce ethnic profiling include improving the quality and decision of intelligence, practical training addressing ethnic profiling and increasing supervision of law enforcement officers' discretionary decisions.

According to the OSJI's 2013 International Standards on Ethnic Profiling, the latter has been further supported by the Council of Europe Human Rights Commissioner who stated that stop and search should be based on "active support from high level police leadership to implement rights-based procedures."

Stop and search review and reform

In the [2013 report by Her Majesty's Inspectorate of Constabulary](#) (HMIC) on stop and search, a "noticeable slippage in the level of attention given to the leadership and supervision of stop-and-search powers by senior officers since the late 1990's," was observed.

HMIC found that 30 of the 43 police forces in England and Wales do not know how to use stop and search powers properly. Furthermore, almost half of the forces "did nothing to understand the impact of stop and search encounters upon communities, with only a very small number proactively seeking the views of the people and communities most affected."

Policy initiatives to address these problems have surfaced in the form of reforms to stop and search powers in the UK and the introduction of amendments to Schedule 7 powers in the Anti-Social Behaviour, Crime and Policing Act, 2014.

On the former, the Home Secretary, Theresa May is said to be pushing for reforms to stop and search in order to clamp down on its disproportionate impact on ethnic minorities and its waste of police resources, given that few detentions result in arrest. The reforms are said to be in a state of abeyance as the Prime Minister battles to appear strong on 'law and order' issues fearing a political challenge from UKIP. Reports suggests that reforms are being sidelined in order not to concede ground to far right parties in the run up to the European Parliament elections next month.

The disagreement between the Home Office and the Prime Minister's office on the subject of stop and search is revealing and ironic. As noted in a column by [Rachel Sylvester in The Times](#), the Conservatives are seeking to appeal to BME voters while at the same time diminishing the importance they place on disproportionate targeting under stop and search.

On the issue of Schedule 7, the amendments to the Anti-Social Behaviour, Crime and Policing Act 2014 will see changes introduced in relation to reducing the statutory period of examination from a maximum of 9 to 6 hours; recording over an hour stops as 'detentions' and granting individuals access to legal counsel; granting all individual detained at ports or airports the statutory right to legal counsel; introducing safeguards to the use of strip searches requiring 'reasonable suspicion' and a supervising officer's consent;

and the repeal of powers to take 'intimate samples' of biometric data.

Given the threat posed to the Conservatives and Labour by UKIP and the perception that voters will look to parties that evince a strong position on law and order and immigration issues, the impact on minorities of discriminatory policing is likely to abound.

In a report published this month by the Council of Europe on the State of Democracy, Human Rights and the Rule of Law in Europe, the CoE notes that "The policing of migration flows has resulted in discussions that fuel the xenophobic debate."

The report also cautions on the growing influence of extremist and populist agendas with harsher immigration policies replacing integration policies and nationalistic and racist ideologies gaining in fervour. The exclusionary rhetoric of far right parties and its dissemination into mainstream political discourse affects established and new migrant communities as xenophobia becomes more pervasive and [minority rights are downgraded](#).

The composition of the European Parliament after the 2014 elections will have a significant impact upon whether the EU will continue to campaign for the reduction of ethnic profiling in Members States' use of stop and search powers. It will also affect whether the UK will continue to be a model for other European states in data collection on ethnic profiling which is crucial to improving policing and protecting against the [violation of minority rights](#).

Therefore, in our manifesto for the European Parliament elections we are urging incumbent and prospective candidates to pledge:

- To promote inter-agency and transnational co-operation in challenging far right ideological movements and their targeting of Muslim communities across the EU.
- To support the work of the Radicalisation Awareness Network and commit resources to tackling threats to security emanating from al-Qaida inspired groups, far right ideological movements, sectarian, ethno-national and other political-ideological movements with due regard for proportionality and threat level; and to avoid the stigmatisation and demonisation of Muslim communities when addressing al-Qaida inspired political violence and terrorism.
- To ensure that necessary work in the area of security and counter-terrorism does not violate the civil and political rights of Muslim communities in Member States and that all necessary legal instruments comply with requirements of non-discrimination and proportionality (eg stop and search policies across the EU).

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