TOOLKIT

Documenting the discriminatory impact of counter-terrorism and counter-radicalisation in the European Union

european network against racism aisbl

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INTRODUCTION

This toolkit provides anti-racism NGOs and activists with tools and methodologies to document the discriminatory impact of counter-terrorism and counter-radicalisation measures on communities at risk of racism, whether directly or indirectly. Indeed, the short-sighted approach underlying the adoption of some counter-terrorism and counter-radicalisation measures leads to structural and disproportionate targeting of ethnic and religious minorities.[1] These measures are not based on evidence or impact assessment and this leaves the door open to violations of human rights.

Documenting the impact of discrimination is paramount to achieving justice. Discrimination, whether at individual or structural levels, is hard to document and prove, and criminal justice and security fields are no exceptions. However, given the securitisation shift of social and equality policies as well as the potential impact of new measures on human rights and democracy, we cannot afford to leave this field unchecked. Any civil society organisation report, any activist voice, any victim's testimony, is important to document the extent of the human rights restrictions targeting innocent members of society.

The toolkit includes tools to monitor the discriminatory impact of both counter-terrorism[2] measures and measures to combat Violent Extremisms and Radicalisation Leading to Terrorism (VERLT).[3] For the purpose of this toolkit, we put forward some tools to monitor discrimination as a consequence of counter-terrorism and counter-VERLT measures in criminal law, soft laws and policies, administrative measures and through the actions of other institutions and structures.

The toolkit provides tools that are relevant in the European Union (EU) context. Based on the 2017/541 EU Counter-terrorism Directive, all EU Member States have to transpose new counter-terrorism measures in their criminal law by 8 September 2018. It is important that NGOs know these EU developments and the discrimination risks entailed.

The European Commission has to assess the impact of the Counter-terrorism Directive on fundamental rights, including on the right to non-discrimination (on the basis of article 29 of the Directive) by 2021. Evidence of the structural and disproportionate impact of the measures on groups at risk of racism would be useful at the national level and for European Commission reporting.

To ensure its relevance and sustainability, any monitoring and documenting exercise needs to fit within a broader strategic plan, in terms of communication, support to victims or

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1   See for example: Amnesty International, *Upturned lives - the disproportionate impact of France's state of emergency*, 2016;
    Human Rights Watch, *France: Abuses Under State of Emergency, Halt Warrantless Search and House Arrest*, 2016;
    Open Society Justice Initiative, *Eroding Trust The UK's Prevent Counter-Extremism Strategy in Health and Education*, 2016.
2   There is no universally accepted definition of terrorism. The 2017 EU Counter-terrorism Directive defines terrorism as intentional criminal acts which given their nature or context may seriously damage a country with the aim to seriously intimidate a population, destabilizing the country structures.
3   There are no universally accepted definitions of these concepts. The Canadian Centre for the Prevention of Radical Behavior defines VERLT as a "process whereby people adopt extremist belief systems—including the willingness to use, encourage or facilitate violence—with the aim of promoting an ideology, political project or cause as a means of social transformation."

advocacy strategy. Establishing clear objectives is central to the data collection process. Organisations should establish clear objectives relevant in their local context. A first step could be to reach out to other ENAR members, unions, community-led groups and human rights NGOs in the country/region to join forces and establish a baseline of knowledge. Together, coalitions should map needs and decide on a common documentation strategy. The toolkit provides some general principles and tools that need to be tailored to the specific country context. In next steps, this work to document discrimination could feed into a more comparable data collection and advocacy by ENAR.

What would be your goals?

Some specific goals could include:
- Campaigning against the discrimination risks posed by a particular national legislation, policy or practice;
- Monitoring how the implementation of the EU Counter-terrorism Directive in your country may lead to discrimination;
- Establishing patterns of discrimination and abuses in practice;
- Launching a communication campaign to show the discriminatory impact, inefficiency and counter-effectiveness of current policies;
- Empowering communities to better understand the impact of these policies and abusive practices.

Clear goals will determine the scope and type of data collected. You will not have the capacity to monitor the entire scope of counter-terrorism and counter-VERLT measures. You may choose to pick some of the more problematic measures. Monitoring is part of a broader plan: it helps to better understand your needs and those of your constituency and membership, making investment of time, human resources and funding relevant. The final product will be more likely easier to disseminate and transform into actions if it is not the end goal but a means to push an alternative narrative and inform progressive policy change.

2011 War on terror and the EU's counter-terrorism strategy 📖

Before 9/11, only a few EU Member States had adopted counter-terrorism measures, mainly aimed at tackling nationalist and separatist movements or extreme political violence at both ends of the political spectrum. After 9/11, a particular focus on Islamist political violence led the EU Justice and Home Affairs Council, on **20 September 2001**, to issue **Conclusions calling for a concerted action in 33 areas and coordination with the United States**. After the Madrid attack on 11 march 2004, the European Council adopted **a declaration on combatting terrorism on 25 March 2004** including 57 measures, most of them tackling crime in general and surveillance. Following the 7/7 attacks on the London underground in **2005**, the EU adopted a new **"EU counter-terrorism Strategy", built around four strands: prevent, protect, pursue and respond.** In **2008**, the **Framework Decision 2002/475/JHA** was amended to provide a definition of terrorist and terrorist-linked offences.

Directive 2017/541 on combatting terrorism 📖

The most recent EU legislation to consider is the Counter-terrorism Directive[4] adopted in April 2017. The Directive was proposed in December 2015 - following the 2015 Paris attacks. It introduces in EU law what was already agreed at UN and Council of Europe levels.[5] The Directive introduces new terrorism-linked offences, which could leave space for arbitrary and discriminatory applications, in particular:[6]

1. Public provocation to commit a terrorist offence (Article 5): Without necessarily being linked to an actual terrorist offence, people can be prosecuted for 'glorification of terrorism' if it represents a 'danger' that a terrorist offence 'may be committed'. There is growing evidence of the way this offence is used to curb the freedom of expression of some communities and groups (young people, Muslims, artists, rappers, journalists, among others).[7]

2. Travelling for the purpose of terrorism (Article 9): Relatively minor involvement or participation is required and this participation can be wilful or voluntary. The level of contribution is not specified, and can therefore be remote from the main criminal offence.[8]

3. Receiving training for the purpose of terrorism.

4. Terrorism financing.

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4   Directive 2017/541 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.
5   UN Security Council Resolution 2187 (2014) and Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (2015).
6   Amnesty International, the International Commission of Jurists, and the Open Society Foundations, *Joint submission on the European Commission's proposal for a Directive of the European Parliament and of the Council on Combating Terrorism and Replacing Council Framework Decision 2002/475/JHA on Combating Terrorism*, 2016, available at: https://www.opensocietyfoundations.org/sites/default/files/submission-ec-terrorism-directive-20160219.PDF.
7   Amnesty International, *Tweet… if you dare: How counter-terrorism laws crush freedom of expression in Spain*, 2018, available at: https://www.amnesty.org/en/documents/eur41/7924/2018/en/. Human Rights Watch, *France's Creeping Terrorism Laws Restricting Free Speech*, 2018, available at: https://www.hrw.org/news/2018/05/30/frances-creeping-terrorism-laws-restricting-free-speech.
8   Joint submission by Amnesty International, the International Commission of Jurists, the Open Society Justice Initiative and Open Society European Policy Institute, 2016, quoted above.

1. What to monitor?

In order to monitor the discriminatory impact of counter-terrorism and counter-VERLT measures on ethnic and religious minorities, NGOs and activists must pay attention to new laws, soft laws, policies and non-legislative measures included in memoranda, service notes, instructions to civil servants or employees. The context in which these measures are adopted, public discourses, as well as practices of law enforcement agents, public authorities and service providers also matters. Beyond the direct discriminatory impact, the structural disproportionate targeting of certain groups, as well as indirect consequences leading to discrimination could also be monitored.

1.1 MONITORING THE LEGAL AND POLICY FRAMEWORK

1.1.1 Monitoring legislation

An evaluation of the legislation and its impact on human rights and the potential arbitrary and discriminatory risks posed by new offences or new law enforcement powers should look at:

1. **Definition.** What definitions of 'terrorism' and 'radicalisation' are used in your country? Have the definitions changed over time? Are these definitions based on UN, Council of Europe or EU definitions? Are they vague? Have new terrorism-linked offences been introduced in criminal law? How defined and precise are these new offences? Do these new offences go beyond the minimum requirements included in the EU Counter-terrorism Directive, posing even higher risks of arbitrariness and discrimination?

2. **Discrimination.** There are different ways in which the text of a legislation can lead to discrimination. First, if the text singles out one group or form of terrorism or radicali-sation, or includes any other discriminatory content, assumption or language. Second, even an apparently neutral provision can have a discriminatory impact. Having broad, unclear and vague definitions creates such broad discretion in implementation that those implementing the legislation can exercise that discretion in a discriminatory manner. Can you assess whether there are risks of arbitrariness, which could lead to discriminatory implementation of a measure?

3. **Proportionality.** Human rights law requires that there should be a reasonable balance between the legitimate objectives pursued by States when restricting human rights and the means used. The measures planned must pass this necessity and proportion-ality test. For instance, collecting everyone's private data to purportedly identify terror-ists would not meet the proportionality standard.

4. **Time frame of the new measures.** Legislation related to terrorism should be limited in time, until the terrorism threat disappears. It should only be renewed under specific conditions. However, many new law enforcement powers are not limited in time and seem to be applied at any point, which can raise questions as to their real goal and impact. Are there safeguard clauses and timelines for review?

5. **Added value of the new measures.** If new legislation is proposed, this is supposedly because the current law is no longer effective or has become obsolete. A good analysis should look at existing legislation and see how it can be improved without introducing new binding mechanisms.

6. **Judicial control and independent and democratic oversight.** If new prerogatives and competences are suggested, new control mechanisms or bodies should be proposed as well. They can fall under general competences but resources (staff, funds, space for debate) need to be considered. New laws are adopted within a human rights framework as all EU Member States have international and European human rights obligations. NGOs could therefore also challenge these laws in court, either exploring how these could infringe EU laws or by taking a case to the European Court of Human Rights.

7. **Funding.** In the current context of budget limitations, funds are often reallocated from human rights or social inclusion programmes to security programmes. The analysis should question choices of reallocation of resources.

1.1.2 Monitoring soft laws, policies and administrative measures

Authorities introduce a range of administrative measures for the purpose of counter-terrorism and counter-radicalisation which can have an adverse impact on groups at risk of racism. Administrative measures are protection measures taken by the executive power with very limited judicial control. They enhance executive powers and police. While they might be considered as harmless, they may undermine the enjoyment of human rights, and in particular the right to non-discrimination.

> ⮞ Can you access information about administrative measures?
> ⮞ What is the level of judicial control or oversight?
> ⮞ What areas do the measures cover (nationality, freedom of movement, police powers)?

1.1.3 Monitoring the adoption process

Counter-terrorism measures can be adopted in a very quick time frame, and in emotional societal contexts, especially after attacks or controversial debates. Parliamentary and social debates should be closely monitored in order to assess the context and spirit in which the legislation or measure is passed.

1. **Time frame.** Allowing time for proper debates, discussions, impact assessment and meaningful civil society contributions is key for democracy. Fast-track procedures do not allow for any of these safeguards and lead to a fragmented approach. The lack of impact assessment, including on human rights, can lead to laws or legislative provisions being unconstitutional or in violation of human rights.

2. **Transparency.** Are the measures adopted in a transparent manner? Are they publicly available? This is important to know as civil society cannot contribute to opaque processes nor can citizens be informed of their rights.

3. **Evolution of measures throughout the legislative negotiations.** Some measures might initially be formulated in a discriminatory manner or pose serious risks of discriminatory implementation. NGOs should track how the different amendments and compromises change the wording and mitigate discriminatory risks.

4. **Accountability.** Keeping track of voting outcomes is crucial to hold decision makers accountable. Tracking results should clearly highlight votes in favour and against, abstentions, number of votes and number of representatives (in order to keep track of missing representatives during the vote), number of votes required and whether or not the draft law was adopted. Campaigns and communication work should reflect the different political parties' positions and possible dissenting positions within the parties. This can support your subsequent advocacy efforts.

5. **Support those who support your cause.** Elected representatives need analysis of the legislation's risks, but they also need to know that supporting a pro-human rights position can be rewarding politically in the long run. Increase your advocacy activity towards allies.

6. **Experts and civil society voices** in the legislative negotiations and consultations are important to monitor. What organisations and groups are asked to give evidence? What opportunity is there for NGOs to speak up and provide a meaningful contribution? Procedural fairness will have a significant impact on the way the legislation is implemented and perceived by different groups.

1.2 MONITORING ENFORCEMENT OF THE MEASURES AND OTHER PRACTICES

Discrimination often plays out in the way authorities enforce these measures in practice. Most of your documentation should focus on this part.

1.2.1 Criminal offences

➡ How many people have been convicted for terrorism-related offences such as glorification or apology of terrorism, travelling for the purpose of terrorism or training for the purpose of terrorism? What was the basis of these convictions? How many persons charged were young people? What was their ethnic or religious background? Did they pose a real danger/threat of committing or inciting to a terrorism offence?

> ### Ethnic profiling 📖
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> Ethnic profiling is understood as a policing measure based on race, ethnicity, religion or nationality rather than individual behaviour or objective evidence.[9] Ethnic profiling is difficult to prove as often no public and official data are available, the procedure is not systematically monitored and reported, and there is a structural lack of accountability of law enforcement agents that prevents sanctions.

1.2.2 Police and border control

- Has there been an increase in perceptions of ethnic profiling practices in the context of counter-terrorism, whether in domestic policing or in the context of border management?
- Are counter-terrorism raids and police operations justified by reasonable suspicion or other criteria? How many of these operations have led to indictment for terrorism-related offences? What is the impact of these operations on the broader family and members of the community?
- Are there any oversight mechanisms to challenge ethnic profiling practices?
- Have changes in law enforcement powers and legal framework relating to data retention and surveillance targeted ethnic or religious minorities and migrants on vague 'suspicion' grounds?
- Have there been limitations to freedom of movement? Who was impacted by these measures and on which grounds?
- Were curfews introduced and in which areas? How is this affecting youth of colour and/or families?
- Has there been unjustified or disproportionate wiretapping or surveillance of individuals, families, communities?
- Have religious or community organisations been subject to surveillance?
- Are the surveillance measures justified and proportionate? Limited in time?
- Have asylum and migration policies and practices been justified by terrorism-related issues?

1.2.3 Citizenship

- How many cases of withdrawal of citizenship or refusal to access to citizenship on the basis of terrorism suspicion have there been?
- Who was affected by these decisions?
- Have there been cases of denial of family reunification on grounds of terrorism or radicalisation?
- Have there been cases of passport confiscation?
- Have residence permits been withdrawn or not renewed for migrants and refugees?

Radicalisation indicators

Indicators of 'radicalisation' should not include physical appearance or religious expression, which would amount to ethnic profiling. There have been some attempts to look at a spectrum of indicators which are balanced and non-discriminatory. These include, but are not limited, to:
- Combination of personal uncertainty, perceived injustice and perceived group threat
 (Bert jan Doosje et al., 2013)
- Social disruption behaviours
- Political anti-system, anti-democratic or pro-violence discourse
- Support to conspiracy theories
- Endorsement of polarising theological theories.

For an example of a detailed description of how to recognise radicalisation behaviours leading to violence, see for instance the Barometer of behaviors from the Canadian Centre for the prevention of Radicalization leading to Violence: https://info-radical.org/wp-content/uploads/2016/08/BAROMETRE_EN_CPRLV_2016-1.pdf

1.2.4 Employment

- Have there been cases of not granting security clearance for certain types of jobs, leading to people losing their jobs?
- How were people informed?
- Have there been other cases of people being fired or not hired for terrorism related suspicion?

1.2.5 Banking and finances

- Have there been cases of asset freezing or closing of bank accounts?
- What remedies are available?
- Does this affect community-led organisations and/or anti-racism organisations?

1.2.6 Education, health and social work[9]

- Have there been cuts to certain service providers or victim support units for reasons of terrorism?
- Are there programmes or practices of surveillance by social services, health workers, education staff, leading to possible referrals into counter-radicalisation programmes?
- Is the surveillance mission in the mandate of the service implementing the measure?
- Does the measure respect the duty of confidentiality of social/health services?

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[9]   A good example of documentation is the Open Society Justice Initiative Report: *Eroding Trust, the UK's Prevent Counter-extremism Strategy in Health and Education*, 2016, available at: https://www.opensocietyfoundations.org/reports/eroding-trust-uk-s-prevent-counter-extremism-strategy-health-and-education.

- How many persons are affected by referrals to counter-radicalisation programmes? What percentage are children or youth? What are the justifications for referrals? Are remedies available? How many wrongly referred persons have there been?
- Do people referred have a criminal record? Can they access their files? Are these files classified?
- What type of indicators of radicalisation are developed at national or local levels? Are these based on personal characteristics? Religious practices?
- Have there been complaints to the equality body linked to counter-terrorism/VERLT practices?

1.3 MONITORING PUBLIC DISCOURSE

Political and media discourse can give an indication of the climate in which measures are implemented. Racist comments can be made during parliamentary debates, or even by high-level decision makers or Heads of State. When the unofficial (or official) goal of a piece of legislation or measure is to 'monitor every Muslim or every foreigner as a potential terrorist' the discriminatory impact is quite obvious. Other examples include making the headscarf a symbol of political Islam and linking political Islam to terrorism. These comments contribute to generating a climate in which part of the population are subjected to different policing, solely based on their perceived 'Muslimness'.

Islamophobia

ENAR defines Islamophobia as a specific form of racism that refers to acts of violence and discrimination, as well as racist speech, fuelled by historical abuses and negative stereotyping and leading to exclusion and dehumanisation of Muslims, and all those perceived as such. It is a form of racism in the sense that it is the result of the social construction of a group as a race and to which specificities and stereotypes are attributed, in this case real or perceived religious belonging being used as a proxy for race. Consequently, even those who choose not to practice Islam - but who are perceived as Muslim because of their ethnicity, migration background or the wearing of other religious symbols - are subjected to discrimination.[10]

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10   For more information, see http://www.enar-eu.org/islamophobia-1372.

2. How to monitor?

2.1 GETTING DATA

It is particularly difficult to assess the impact of counter-terrorism legislation and practices on certain groups through quantitative data, in the absence of official equality data. There is value however in gathering qualitative data. Both types of data and the associated methods have strengths and limitations.

> ### Equality data collection 📖
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> Equality data collection is defined as all types of disaggregated data used to assess the comparative situation of a specific group at risk of discrimination. Equality data can be collected based on different methodologies (third-party identification,[11] self-identification,[12] auto-hetero perception,[13] objective criteria) and using different sources (public censuses, administrative registers, surveys, etc.).[14] In most EU countries (with the exception of the United Kingdom and to a certain extent Ireland), there are no reliable, systemic data collection schemes disaggregated by racial or ethnic origin or religion, and that would allow to measure discrimination on these grounds, or the situation of particular groups in different walks of life. Criminal justice and the counter terrorism field are no exceptions.

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11 Third-party identification: attribution of personal characteristics to the data subject by a third person based their (external) perception or evaluation.
12 Self-identification: attribution of personal characteristics to the data subject by themselves based on their own (internal) perception of their identity.
13 Auto-hetero perception: evaluation or estimation by the data subjects of the personal characteristics that they believe third persons (the majority) are likely to attribute to them.
14 See https://www.opensocietyfoundations.org/sites/default/files/ethnic-origin-and-disability-data-collection-europe-20141126.pdf.

Method	How?	Where? When? With whom?	Strengths and limitations
Polls, questionnaires and surveys	▪ Survey to collect testimonies of both victims and witnesses based on questionnaires ▪ Provide information on the purpose and the time frame of the research to respondents ▪ Use a variety of channels (phone, email, face to face…) and ensure a sample as large and representative as possible	▪ NGOs with members or partners to survey experiences of victims and potential victims ▪ Events such as annual rallies, demonstrations, Friday prayer for example ▪ Online, through Facebook for instance ▪ Through access to NGO databases if they consent to provide access to members ▪ Randomised walking surveys in certain neighbourhoods	**Strengths:** Polls and surveys provide quantitative data that help to get as much information as possible from communities. This method is very flexible, quick and can reap impactful results with limited budget, resources and expertise. **Limitations:** There can be selection bias – where the selection of respondents already includes the population it intends to study and the randomisation is not ensured, for instance: ▪ members of human rights organisations are already aware of human rights implications or need for political empowerment, so more likely to be vocal and even targeted by policies; ▪ if membership is fee-based, people who are in a more precarious situation may not be reached. If the questionnaire is too lengthy, some respondents may drop out, leaving some issues unaddressed. You may not be able to show discrimination without a comparator group (such as majority population), but you can get a good insight from a community.

Method	How?	Where? When? With whom?	Strengths and limitations
Interviews	⮕ A specific number of interviews of victims or witnesses of counter-terrorism measures. This is useful even if only a small number of persons can be interviewed. ⮕ Structured/semi-structured interviews can be used to develop individual case studies for analysis.	Victims, young people, teachers, health workers, lawyers, people referred to in radicalisation programmes, or targeted in other ways through counter terrorism measures	**Strengths:** Structured interviews to tell people's stories can be as impactful as quantitative data. They enable a deeper understanding of the impact of measures on individuals' sense of identity and belonging. **Limitations:** It can be time consuming and also involves a small number of people, so it can be seen as less representative.
Case studies	⮕ Case study of an individual or a family or a community in a particular city ⮕ Case studies are developed for analysis based on the results of other data collection activities such as desk-based research, interviews, surveys, etc.	Use comparative case studies (e.g. treatment of far-right violence, support of political violence)	**Strengths:** Case studies allow many more details of stories and of the impact on people's lives. Case studies can help highlight the discriminatory implementation of measures by showing how actions and behaviours by members of ethnic/religious groups are treated differently to the same actions and behaviours of individuals from majority groups. **Limitations:** With case studies it can be difficult to draw comparisons and conclusions that apply across the board.
Content analysis – media, government texts and legislation	Desk research based on media, official declarations, texts, legislations and policies	Define a period of time in which you run the desk research. Get as much information on the declarations surrounding the adoption of new measures. Run an analysis of the texts and the discourses.	**Strengths:** Provides the context, the analysis and the theoretical frame. **Limitations:** Does not provide the human stories or the practical impact of the legislation and measures.

2.2 PRINCIPLES TO RESPECT WHEN DOCUMENTING COUNTER-TERRORISM

There are some key principles to respect when documenting human rights violations in general.[15]

1. **Do no harm principle.** Do not put people in danger while conducting research. Your involvement should not have a negative impact on the victim or provoke counter charges by the authorities.

2. **Consent.** People interviewed during the research should receive information about the purpose of the research, the methodologies used and its potential implications, in written form and in a language that they are fully able to understand. People should also be informed about the potential risks they might face and the fact that they can withdraw their participation at any moment, without consequence. The researcher should mention their contact details to ensure that people can come back to them for further information or withdraw their participation. A consent form should be signed by the participants stating that they fully understand these points.

3. **Confidentiality.** Anonymity must be guaranteed to the victim. Carefully consider the risks of going public. Respect data protection legislation in your country.[16] The data collected should not be used for any other purpose than the original purpose (documenting and addressing human rights violations). Ideally, interviews and other similar data should be stored on an encrypted hard drive not connected to the internet and stored in a safe place.

   When collecting sensitive data that may reveal racial, ethnic origin or religion, a set of binding core principles developed by civil society organisations should be respected:[17]
   - Self-identification: attribution of personal characteristics to the data subject by themselves based on their own (internal) perception of their identity.
   - Voluntary: every individual has the right to opt out of data collection.
   - Anonymous data collection.
   - Informed consent: subject must understand the purpose of the data collection and the context of the research.
   - Community consultation: communities should be genuinely consulted on the naming of the categories as well as on the involvement of community representatives, minority-led organisations or institutions in the analysis and dissemination of the data and findings.

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15   For more information on general principles when documenting human rights violations, see https://www.icrc.org/eng/assets/files/other/icrc-002-0999.pdf.
16   Since May 2018, the EU General Data Protection Regulation is directly applicable in all EU Member States.
17   See European Network Against Racism, *Measure, Plan, Act – How data collection can support racial equality*, 2014, available at: http://www.enar-eu.org/IMG/pdf/20084_equalitydatacollectionpublication-8-low.pdf.

⊡ Multiple choice: right to choose several categories and be able to have intersecting identities.

4. **Impartiality.** Stick to a detailed, accurate description based on facts. Interviews should be balanced, based on a variety of witnesses and victims. Try to fact check rumours. By preferring to rely on rights holders ('ordinary people') over activists, you prevent opponents from discrediting the research by accusing victims of having an agenda. Have at least two different sources for one incident if possible. Use triangulation/cross-checking of facts (further witnesses, photos, etc., look for other means of verification).

5. **Consistency.** Interviews must be conducted using the same consistent methodology, to ensure consistency and comparability of the data collected. Interviews can be conducted through different channels (telephone, email, internet discussion) but interviews face to face should be preferred, as it allows to build trust more easily, and therefore have access to more sensitive information.

6. **Precision.** Be as specific as possible, details matter.
   ⊡ *Who* is doing what to whom?
   ⊡ *When*: time/place of the incident. Chronological description of incident or of successions of events, but also: what happened before, what happened after? Any impact?
   ⊡ *How*: overlapping with which developments/circumstances? How was the incident made possible? Which decision making procedures play a role?
   ⊡ *Why*: always difficult to answer, but it is about situating the incident in a bigger context/ pattern of discrimination. Does this case illustrate something?

7. **Accuracy.** To be credible, there should be no exaggeration. Be transparent with regard to sources. How do we know about the incident? Are there direct witnesses? It is important to know the applicable legal framework (e.g. equality and non-discrimination law, law applicable to the use of discretionary police powers, counter-terrorism legislation, etc.) as well as the political context. Also, repeating questions during the interviews allows you to detect incoherence, over-estimation or any inaccuracies. Materials such as emails, official documents, records and minutes, recordings, etc. can be available, but the interviewees can forget to bring them or even not see the relevance of mentioning them. Be sure to ask if such documents exist, if they can be shared (if charges and prosecution are in process, confidentiality can prevent the interviewer from having access to them). The interview must be conducted in a native or fluent language. This could therefore require trustworthy translators, who understand the objective of the research.

8. **Fostering trust.** Creating a network of contacts among civil society organisations, civil servants and community leaders is a great way to get access to trusted victims and witnesses. It is also important to question the impact that such research would have on victims to prevent victimisation by retelling and reliving traumatic experiences. Steps should be taken to prevent revictimisation, foster trust and offer support to victims. The purpose of the interview, as well as information on the organisation or on the researcher must be shared with the interviewee, giving full transparency

and addressing the victims' fears. Priority should be given to the interviewee's well-being, to their physical and mental integrity. Also, the interviewee must be assured that refusing to answer certain questions is possible and that the interview can be stopped at any point, rescheduled or cancelled. Consent must be renewed regularly during the interview, giving time to answer or simply asking if the victim would like to stop and move on to the next question. A consent form can be useful. While a "no" should never be questioned, a "yes" can be re-evaluated. The research should therefore be sensitive to any pressure or constraint that would make the victim feel uncomfortable. Also, judgments on life style choices (in terms of religion, education, occupation…) irrelevant to the interview have no place during the interview.

3. Checklist on monitoring

Area to document		Guiding questions
Legislation	**Content**	What is the key counter-terrorism/counter-VERLT legislation in your country? What definitions of 'terrorism' and 'radicalisation' are used and are they problematic? Have new measures been adopted in the last five years? Have new terrorism-related offences been introduced? How are they defined and do they pose risks of arbitrary or discriminatory implementation? Is the text discriminatory or could it have a discriminatory impact on ethnic and religious minorities because of arbitrariness or not meeting human right standards? Are the provisions foreseen for a certain amount of time or for an unlimited time? What is the level of judicial control foreseen?
	Process	Has there been an impact assessment before the new legislation entered into force? Has the added value of the new legislation been demonstrated? How are the new measures and powers financed? Who supported the new law? Mapping of allies.
Policies		What other non-legislative policies have been adopted in the last five years? Rulings, orders and instructions in areas such as prison administration, education, policing, etc. Has the adoption process been transparent? What are the oversight and accountability mechanisms foreseen? Are there any official radicalisation prevention programmes or de-radicalisation programmes? In what areas have policies been adopted (prisons, education, online removal of illegal content, etc.)?

Area to document	Guiding questions
Practices	Are there reports of employers firing certain groups of employees? Refusing employment? What types of administrative measures are adopted in your country in the context of terrorism/radicalisation: limitation of freedom of movement, curfews, surveillance, referrals into radicalisation programmes, etc.? Are counter-terrorism police operations justified by reasonable suspicion? What is the impact of these operations on the broader community? Are there oversight mechanisms to challenge police operations? Are these mechanisms used and efficient? Are there reports of abusive or discriminatory referrals to radicalisation programmes? Are remedies available? Are there reports of discrimination or misconduct by health professionals, education staff or social workers linked to counter-terrorism or radicalisation policies? Are there reports of increased ethnic profiling in the name of counter-terrorism, after terrorist attacks, whether in domestic policing or at borders? What other human rights are affected by these policies (freedom of expression, right to a fair trial, due process, right to education, etc.) and how are the human rights violations affecting minorities? What is the impact on victim support services and civil society organisations (funding, suspicion, delegitimisation)? What types of indicators of radicalisation are being developed? Do they include religious practice or appearance?
Discourses	Hate speech or discriminatory remarks in parliamentary debates linking terrorism and minorities Hate speech or discriminatory remarks in government declarations linking terrorism and minorities

This toolkit provides tools and methodologies for civil society organisations and activists to document the discriminatory impact of counter-terrorism and counter-radicalisation measures on communities at risk of racism, whether directly or indirectly. Documenting the impact of discrimination is paramount to achieving justice. Discrimination, whether at individual or structural levels, is hard to document and prove, and criminal justice and security fields are no exceptions. However, given the securitisation shift of social and equality policies as well as the potential impact of new measures on human rights and democracy, we cannot afford to leave this field unchecked.

The European Network Against Racism (ENAR) stands against racism and discrimination and advocates equality and solidarity for all in Europe. We connect local and national anti-racist NGOs throughout Europe and act as an interface between our member organisations and the European institutions. We voice the concerns of ethnic and religious minorities in European and national policy debates.

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