



European Network Against Racism  
Réseau européen contre le racisme

## EU Counter-terrorism policies from an equality perspective:

### Everyone should feel safe in Europe

January 2015

The European Network Against Racism (ENAR) condemned [the deadly attacks](#) which took place in Paris from 7 to 9 January, including the [anti-Semitic killings](#) in a Kosher supermarket. These events have triggered discussions on how to improve counter terrorism in Europe. On 29<sup>th</sup> January, Justice and Home Affairs Ministers will meet in Riga to devise the ground work for an EU security strategy. For ENAR, these tragic events and their consequences have demonstrated that more than ever, it is time for States to live up to their equality, social inclusion and democratic obligations. In line with its [General policy Paper N.4 on counter-terrorism and combating racism](#) published in November 2007, ENAR calls on European leaders to refrain from hasty and intrusive policies which could have a discriminatory impact and potentially counter-productive results, in particular further alienating young people who belong to ethnic and religious minorities.

Security and fundamental rights are not in opposition. ENAR calls on the European Union and Member States to embed the following **3 principles** in the upcoming counter-terrorism strategies:

#### **1. Counter-terrorism policies must respect international human rights standards including non-discrimination**

**Impact on human rights.** Human Rights Watch has already warned about the risks of hasted counter-terrorism law and policies, [in the United States](#), but also in [Europe](#). ENAR supports existing calls for a European response to terrorism which remains in compliance with international human rights standards. Counter-terrorism policies may have an impact on several human rights: the prohibition against torture, right to a fair trial, prohibition of arbitrary detention, the right to leave one's own country, freedom of religion, expression and association and the right to privacy.

**The right to leave one's country.** The right to leave a country, including one's own, should only be restricted for specific and legitimate reasons and by proportionate means, according to the [case-law of the European Court of Human Rights](#), and not on general assumptions (article 12 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of Protocol No. 4 to the European Convention on Human Rights (ECHR)). Therefore the potential withdrawal of an individual's ID or passport based on subjective decision and without a court decision based on criteria set in the law is worrying.

**Withdrawal of citizenship.** Proposals such as the withdrawal of EU citizenship for bi-nationals on suspicion of radicalisation would amount to a double penalty if suspected terrorists are also

prosecuted. This would imply that some citizens are second-class citizens, who could then only be detained in sub-standards prisons outside of the EU in which they might be subject to widespread torture practices.

**Electronic monitoring.** Similarly, proposals to subject suspects to electronic monitoring – therefore infringing on their freedom of movement – should not be possible under general and subjective assumptions, but only after due consideration by an independent and fair judicial system.

**The right to a fair trial.** Individuals suspected of war crimes or of having fought in terrorist organisations should be prosecuted before independent justice systems and criminal sanctions should be taken accordingly. For other criminal offenders, alternative measures to detention should be explored as a way to reduce overcrowding in prisons, reduce repeat offender rates as well as prevent further radicalisation and encourage re-insertion in mainstream society.

**Radicalisation in prison.** Proposals to separate ‘radical’ prisoners from the rest of detainees would seem difficult to implement without infringing on freedom of religion as no Member State has formulated a reliable and non-discriminatory list of indicators of radicalisation. Assessments of an individual’s potential radicalisation remain extremely subjective and have remained unreliable.

**Non-discrimination.** All human rights restrictions should be specifically foreseen by law, legitimate and implemented according to proportionate means. In conjunction with discrimination, restrictions currently being discussed are particularly worrying. Preventive surveillance and other restrictions are likely to have a disproportionate impact on ethnic and religious minorities that fit certain general profiles. Europeans Muslims, for instance, are subjected to greater scrutiny, which in turn increases their stigmatisation by the general public.

**Intersectionality.** Because more ‘visible’, some categories of individuals are particularly vulnerable to discriminatory counter-terrorism policies, and may be discriminated on the basis of several discrimination grounds. People of African Descent and Black Europeans - in particular if Muslim - are for instance subject to greater scrutiny. Similarly, Muslim women wearing religious symbols and young Muslim men are more likely to be singled out by these policies.

**Impact on third-country nationals.** In the context of stricter migration policies observed recently, counter-terrorism measures should not be used as a way to restrict migration conditions for citizens of countries facing high-level of terrorist activities on their soil. Human rights standards, including the right to privacy apply to third-country nationals and border management should be human rights compliant in this regard.

## **2. Counter-terrorism policies must avoid discriminatory profiling and data abuses**

**Data mining.** The European Commission’s proposals to collect and process personal data, such as the PNR and other data mining practices, must be reviewed by the European Data Protection Supervisor (EDPS) and Article 29 Working Party, according to EU data protection standards. Their implementation must be subject to effective supervision and remedies in case of breach of fundamental rights. The [FRA’s opinion](#) on the most recent Commission proposal on PNR should be taken into consideration.

**Racial/ethnic profiling.** From a non-discrimination point of view, PNRs and other data mining and surveillances practices could lead to discriminatory practices and prohibited processing of data revealing race, ethnic origin or religion through the use of proxies. Additional categories in hotels or planes, such as 'dietary requirements' for instance, could provide such proxies to religion. Names are also used as a proxy for race, ethnic origin or religion, while being often an inaccurate indication. Other information such as residency status, home address, nationality, place of birth, phone calls to certain countries, time of bank operations or physical appearance (a beard, a veil, etc.) could be used to ethnically/racially profile individuals. An [opinion by the former Council of Europe Commissioner for Human Rights](#) points out the thin line between objective 'intelligence profiling' of patterns and actual racial/ethnic profiling. "Targeting people because they fit a particular basic stereotype - being a young, practising Muslim, and having at some time travelled to Pakistan, for instance - is ethnic-racial-religious "profiling"." Profiling based on data mining has increasingly being used and is difficult to differentiate from police profiling.

**Impact on Muslims.** Evidence from [ENAR Shadow reports](#) and the [FRA](#) shows the disproportionate effects on Muslim communities of the post 9/11 practices such as racial profiling. ID checks at mosques for instance have been reported even in countries with a low terrorism risk. Risks that regular citizens would want to conduct justice themselves or 'inform' the police have increased and wearing religious symbols or praying in public could be seen as suspicious behaviour. Such discriminatory practices are however hard to demonstrate because of the lack of disaggregated data.

**Equality data collection.** ENAR believes that equality data collection is necessary to plan effective public policies and assess their implementation. Anonymous statistical data, disaggregated by ethnic origin, race or religion, should be collected through tools such as stop and search forms to monitor law-enforcement practices and policies and identify potential indirect discriminatory effects.

**Safeguards.** Profiling mechanisms should be under regular review by Member States and the Council of the EU to assess their actual effectiveness. ENAR supports the European Parliament's calls for reinforcing safeguards to the Commission PNR and other counter-terrorism proposals and prohibit racial/ethnic profiling.

### **3. Counter-terrorism policies must be backed up by deeper and more effective solutions**

**Real community involvement.** Counter-terrorism policies are often designed by decision-making bodies, which are deeply secularised, failing to understand the dynamics within religious spheres. Muslim communities for instance are on the EU agenda only through the security lens but not with regards to equality and social inclusion. In many EU countries, decision-makers fail to engage with the real stakeholders in European Muslim communities and develop control policies from the majority perspective, with no involvement of the community. There have been little real community relation practices like in the US.

**Addressing social inequalities.** The impact of the financial and economic crisis on ethnic and religious minorities is also often neglected. 'Radicalisation' is seen from a religious perspective only with little consideration for the economic and social factors, which would demand much deeper reforms. Social inequalities lead to violence, and youth who do not feel they are part and parcel of the social fabric

are increasingly lured by the feeling of belonging to groups promoting violence, whether jihadist organisations or far-right movements.

**Measures efficient in the long run.** Non-human rights based security-focused measures may seem efficient in the short-term but alienate communities in the long term. There is often an assumption that Muslim community leaders and groups are a source of information on terrorism and the use of informants and other intelligence methods may be used in religious communities even before being based on grounded suspicions. Intelligence agencies should be accountable before democratically elected institutions to prevent the use of aggressive and provocative methods. Community engagement and minority-led initiatives should be supported as an alternative to coercive investigations, which could be counter-productive.

**Inclusion vs. integration.** Measures focusing on migrants' integration to "European values" are also not satisfactory to address the needs of EU citizens born and raised in Europe. They may on the other hand be used as an excuse to further stigmatise migrants and increase border control towards certain categories of third-country nationals.

**Strengthened and accountable security forces.** An increased military presence in front of public places or places of worship is not satisfactory to long-term security and could lead to human rights abuses and less accountability. The military is not trained to do police work. An increase of police and military presence is not only very costly but will also not be enough to protect European Jews, who may feel that leaving Europe is their only alternative should they want to be openly Jewish. Likewise, protection of mosques and other places of worships for Muslims must be accompanied by measures to reassure Muslim communities, and in particular Muslim women, in their daily life. Efforts should be made to restore ethnic and religious minorities' trust in law-enforcement authorities and promote community policing, using existing best practices. Europe ethnic and religious minorities must feel safe in Europe. Security is a basic need for everyone to equally engage in society.

**Long-term social investment.** More long-term social investment in education, housing, employment, and health policies is crucial. More resources to intelligence services, police forces and justice systems are also needed. A deeper look at the consequences of austerity policies on public investment in regalian prerogatives of States as well as social, educational, housing and employment programmes is needed to redress damages.

**Combat all forms of discrimination.** Discrimination undermines social cohesion and the society as a whole, and may reinforce radicalisation and violence patterns. Equality and non-discrimination standards must be complemented by specific policy strategies to address all forms of racism, including anti-Semitism and Islamophobia. Security alone will not be enough to break the vicious circle of exclusion, mutual fear and suspicion. Community and NGOs' initiatives aimed at promoting cross-community dialogue and social inclusion of minorities should receive the necessary funds to reach a larger number of beneficiaries.

## **Recommendations to the EU institutions and Member States**

1. Pay special attention to the European Court of Human Rights' jurisprudence and to CoE standards including the Guidelines on Human Rights and the Fight Against Terrorism and ECRI GPR N.8 on Combating Racism while Fighting Terrorism
2. Strengthen fundamental rights safeguards within impact assessment of new counter-terrorism initiatives
3. Collect equality data to assess the measures' impact on specific communities
4. Ensure access to effective remedies and create accessible, confidential and independent complaint mechanisms in case individuals feel they are disproportionately affected by security and counter-terrorism measures in any new proposal
5. Encourage and develop programmes of community policing and community reach-out activities across Europe, in full respect of fundamental rights principles
6. Subject intelligence agencies to regular parliamentary review to ensure accountability and transparency
7. Ensure that social inclusion, non-discrimination and equality policies are a key element in any security strategies, not just a tick the box exercise, and adopt specific strategies to address anti-Semitism and Islamophobia
8. Ensure the real engagement with ethnic and religious minorities in design, implementation and monitoring of counter-terrorism strategies
9. Empower ethnic and religious minorities through support programmes to engage in relevant policy making, and contribute to improving the social and economic status of their respective communities in the middle to long terms
10. Provide for sufficient resources and structures to facilitate on cross-community dialogue and support NGOs and community-led initiatives to foster education, social inclusion and mutual understanding.

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***The European Network Against Racism (ENAR) is a network of vibrant NGOs working to promote equality and solidarity for all in Europe. We connect more than 150 local and national anti-racist NGOs throughout Europe and voice the concerns of ethnic and religious minorities in European and national policy debates.***