

# A HUMAN RIGHTS GUIDE FOR RESEARCHING RACIAL AND RELIGIOUS DISCRIMINATION IN COUNTER-TERRORISM IN EUROPE

## Executive Summary

*‘Being the target of a discriminatory counter-terrorism measure can cause embarrassment, fear, anxiety and trauma, with potential long-lasting effects. The cumulative experience of acts of racial discrimination adversely impacts the mental and physical health of ethnic minorities, including contributing to diminished self-esteem, depression, psychological distress, and anxiety.’*

–The Research Guide, Section 3.2.3.5, p. 50

### Why is a new research tool necessary?

Discrimination against Muslims in the counter-terrorism context in Europe is a long-standing human rights concern. In the last two decades in particular, lawful religious, cultural, and political activities and affiliations of Muslims have been construed as dangerous, and that label has been used to justify surveillance, arrest, expulsion, nationality-stripping, counter-radicalisation measures, and other restrictions on their rights. By constructing and reinforcing the notion of Muslims as a ‘threat’, such measures have helped create an environment in Europe where Muslims are the subjects of virulent hate speech and vulnerable to public attacks. It has been nearly 20 years since the 11 September 2001 attacks in the United States and the discriminatory targeting of Muslims and their communities has not abated; in fact, the problem in Europe and many parts of the world has grown worse. As a result, individuals, families, and communities have suffered deep fear and endured profound trauma.

Despite widespread acknowledgement of this issue from UN and European institutions, discrimination has generally received less attention from human rights groups and oversight bodies than other human rights violations in the counter-terrorism context, partly because it is difficult to prove. The disparate impact of COVID-19 measures on minorities and the securitisation of the public health response has only highlighted the need to challenge discrimination in counter-terrorism. The uprisings sparked by the killing of George Floyd in the United States and other parts of the world have prompted many organisations to reassess their contribution to antiracism. This guide encourages readers to redouble their efforts to combat discrimination specifically in the counter-terrorism context and equips readers with the tools to challenge systemic racism and threats to religious freedom in that realm.

## What is The Research Guide about?

The Research Guide provides in-depth guidance for researching racial and religious discrimination in the counter-terrorism context in Europe, based on international human rights law.

The Research Guide covers:

- **principles of international discrimination law** and their application to the counter-terrorism context;
- **the elements of a claim of discrimination** (‘what needs to be demonstrated’) and different methodologies and forms of evidence that can be used (‘how to demonstrate discrimination’);
- **common challenges to proving discrimination** in the counter-terrorism context; and
- **key recommendations** for researchers in NGOs and oversight bodies.

The guide draws on **discrimination case law** in areas such as employment, access to goods and services and education. It includes examples from national jurisdictions, such as the United Kingdom, France, Hungary, Northern Ireland and Belgium, and case studies from outside Europe, including Canada, the United States and Chile, as well as EU and ECHR jurisprudence.

## How was The Research Guide developed?

The Research Guide is the product of a two-year collaboration between Amnesty International and the Open Society Foundations aimed at facilitating and encouraging investigation of the discriminatory impact of European counter-terrorism laws and policies. Consultations with many stakeholders indicated that there was a gap in resources when it came to the hard work of researching and proving discrimination in counter-terrorism. The project began with a small meeting of legal, academic, and NGO experts in June 2019, followed by expert interviews and legal research. A group of academics, researchers, and campaigners received an early draft of the guide in July 2020 and provided feedback. After further internal reviews, it was launched online in February 2021.

## Who should use The Research Guide?

The guide is aimed at individuals and organizations conducting research and engaging in advocacy, campaigning, and litigation to end discrimination in the counter-terrorism field. This includes lawyers, activists, advocates, researchers in NGOs, and other relevant personnel at oversight, accountability and equality bodies. Anyone interested in antiracist or antidiscrimination work would find it useful.

## What are some of the key recommendations made in The Research Guide?

Human rights organisations, researchers, and advocates should:

- **Engage in research to document discrimination** in the counter-terrorism context, recognising that evidence of discrimination is often circumstantial and that the absence of direct evidence is not lethal to establishing a prima facie claim;
- Use a **combination of methods and sources of information**, outlined in the guide, in order to establish the strongest case possible;
- Identify **specific grounds of discrimination based on the context and available evidence**, while also explaining the manner in which Muslims are increasingly racialised such that the grounds of race, religion, and ethnic origin are linked;
- Consider **pursuing litigation in order to prompt disclosure of relevant evidence**, where evidence of discrimination is otherwise unavailable;
- Call on states to **refrain from classifying certain crimes as ‘terrorism’ based solely on the presumed political or ideological motive** of the perpetrator, relying instead on the ordinary criminal justice system and, where necessary, on war crimes, crimes against humanity and international criminal law; and
- **Engage with ombudspersons, equality bodies, and National Human Rights Institutions** to ensure that they advocate with their governments for the **mandate to exercise their oversight functions** in relation to counter-terrorism; where such a mandate already exists, **engage with and provide information regarding violations** of the right to non-discrimination in the counter-terrorism field.

Oversight and accountability mechanisms should:

- Engage in research to document discrimination in the counter-terrorism context, including **equality assessments of counter-terrorism laws and policies**, where this is within their remit;
- Consult and **engage with civil society** in their work on counter-terrorism and national security, including discrimination in the counter-terrorism field;
- Encourage and **facilitate the use of complaint mechanisms** by victims of discrimination in the counter-terrorism context; and
- Call on states to **collect and publish disaggregated data** relating to their counter-terrorism actions.

The Research Guide is intended to help right a longstanding wrong by providing activists and practitioners with tools to fight against discrimination. It can also provide victims and survivors of such traumatic abuse with an avenue to a remedy for violations of their human rights.