

The background is black with several white geometric shapes. In the top left, there are three curved, wedge-like shapes pointing towards the center. A large white triangle points from the bottom left towards the center, partially overlapping the text. The text is in a bold, sans-serif font, colored in a bright yellow or orange. The words "and" are smaller and positioned between the main lines of text.

PREVENTING and
COUNTERING
RACIAL PROFILING
of PEOPLE of
AFRICAN DESCENT
GOOD PRACTICES
and CHALLENGES

2019年12月31日 星期三

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FOREWORD

Racial profiling refers to the process by which law enforcement relies on generalizations based on race, colour, descent or national or ethnic origin, rather than objective evidence or individual behaviour, to subject people to stops, detailed searches, identity checks and investigations, or for deciding that an individual was engaged in criminal activity. Racial profiling results in discriminatory decision-making. There are examples of law enforcement agencies' targeting people of African descent across a range of national contexts.

Whether arising from the attitudes and practices of individual officers or the discriminatory culture or policies of law enforcement agencies, racial profiling is a long-standing practice in many agencies. Moreover, contemporary concerns about terrorism and migration continue to add pressure on law enforcement officers, which frequently drives them to resort to the misguided strategy of racial profiling in pursuit of public safety and security.

The practice of racial profiling violates a number of key principles and rights under international human rights law. These include non-discrimination and equality before the law and equal protection of the law. By its nature, racial profiling departs from a basic principle of the rule of law that law enforcement determinations should be based on an individual's conduct, not on their membership in an ethnic, racial or national group. Racial profiling may also have a negative impact on peoples' enjoyment of other human rights, including the rights to life, liberty and security, privacy, freedom of movement, protection against arbitrary

Racial profiling has been found to be an ineffective policing tool, as it is largely unsuccessful in crime prevention.



INTRODUCTION

A. Background

1. The programme of activities for the implementation of the International Decade for People of African Descent places great importance on preventing and countering racial profiling. In its resolution 69/16 adopting the programme of activities, the General Assembly noted the common problem of racial profiling and called upon States to design, implement and enforce measures to eliminate the problem. The present publication provides an overview of the types of racial profiling experienced by people of African descent, drawing on responses to a questionnaire circulated by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to key stakeholders, the applicable international legal framework, actions by international human rights mechanisms and documented examples of good practices.

2. While illustrative examples of manifestations and impacts of racial profiling on people of African descent from several countries are presented, greater efforts to collect information from other countries are required to address the problem.

B. Definition of racial profiling

3. There are multiple understandings of the concept of profiling. In the context of law enforcement, profiling has been defined as “the systematic association of sets of physical, behavioural or psychological characteristics with

particular offences and their use as a basis for making law enforcement decisions”.¹ In his report of 2015, the former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, indicated that racial and ethnic profiling could be commonly understood to mean “a reliance by law enforcement, security and border control personnel on race, colour, descent or national or ethnic origin as a basis for subjecting persons to detailed searches, identity checks and investigations” or for determining whether an individual was engaged in criminal activity (A/HRC/29/46, para. 2).

4. Racial profiling is incompatible with the protection of human rights and may be found in practice among police, customs, immigration and national security agencies. It is often manifested in the context of stops, identity checks, personal searches, arrests, raids, border and customs checks, home searches, targeting for surveillance or immigration decisions carried out by such agencies.

5. Race, colour, descent or national or ethnic origin may legitimately be used by law enforcement agents as part of credible suspect descriptions related to specific crimes, for example, as provided by witnesses or by intelligence sources.² In such cases, however, suspicion is based on reasonable and objective grounds about a particular crime or specific suspect, rather than on stereotypes or generalizations about the kinds of people who tend to commit crimes.

6. It should be noted that profiling can also be biased on the basis of sex, gender or religion or other prohibited or intersecting grounds. Those practices should be also addressed.

C. Examples of racial profiling of people of African descent

7. Concerns about racial profiling of people of African descent have been expressed in regard to various countries. Such concerns include the findings of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Working Group of Experts on People of African Descent through its country visits.

8. For example, during its country visit to Brazil, the Working Group found that there was an overrepresentation nso pln3 (t

the city, they were stopped 7,238 times during the period 2013–2015, which represented about 8.8 per cent of the total stops during that period, or 2.3 times more than could be fairly expected (*ibid.*).³

10. In her report of 2018, the current Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance addressed the issue of profiling in the context of access to citizenship and other status (A/HRC/38/52). She noted that ethno-nationalist ideologies might, in some cases, be implicitly manifested in legal and policy frameworks that systematically excluded specific racial, ethnic or national minorities from citizenship status, even where members of those minority groups had been territorially resident for multiple generations (*ibid.*, para. 47). The phenomenon has had an impact on persons of African descent in various regions. For example, in the Dominican Republic, it was reported that individuals of Haitian descent were treated in a discriminatory manner in the registration offices responsible for issuing important identity documents (A/HRC/7/19/Add.5-A/HRC/7/23/Add.3, para. 62). Although many people in the Dominican Republic did not have proper identification documents, only those with “dark skins and Haitian features” were presumed to be “illegal” (*ibid.*). Similarly, the Committee on the Elimination of Racial Discrimination expressed concern about the increased use of racial profiling by local law enforcement agencies in the United States of America to determine immigration status and to enforce immigration laws (CERD/C/USA/CO/7-9, para. 18).

³ See also Lorne Foster, Les Jacobs and Bobby Siu, “Race data and traffic stops in Ottawa, 2013–2015: a report on Ottawa and the police districts”, research report prepared for the Ottawa Police Service, October 2016, pp. 3–4.



INTERNATIONAL HUMAN RIGHTS LAW, LEGAL AND POLICY FRAMEWORK AND THE WORK OF HUMAN RIGHTS MECHANISMS

11. Racial profiling violates a number of key principles and rights under international human rights law. These include principles of equality and non-discrimination contained in article 2 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights, articles 1, 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 2 of the Convention on the Rights of the Child. Those provisions offer a range of generalized protections of rights and freedoms against discrimination on such grounds as race, colour, descent, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The provisions include obligations on States to take steps to eliminate discrimination through laws, policies and institutions.

12. According to article 7 of the Universal Declaration of Human Rights and article 26 of the International Covenant on Civil and Political Rights, all persons are equal before the law and are entitled without any discrimination to the equal protection of the law and to equal protection against discrimination. Racial profiling violates those rights.

13. In addition, racial profiling may have a negative impact on peoples' enjoyment of a number of other human

rights, including the rights to life, liberty and security; to

IV GOOD PRACTICES

A. Overview

25. Law enforcement agents engage in racial profiling for a variety of reasons, including individual factors and agent biases, which may be subconscious or implicit. Such factors and biases may also be reinforced by the collective endorsement of racial profiling within institutions and by the lack of any human rights culture within law enforcement agencies. Addressing the issue requires a comprehensive policy framework.

26. Fortunately, as recognition of racial profiling has increased, so has the variety of strategies adopted by Governments, law enforcement agencies and civil society organizations to counter the problem. Such strategies may involve laws and policies that prohibit racial profiling and provide guidance on appropriate conduct by law enforcement officials; systems of data collection and monitoring that track police activities; mechanisms for the internal and external accountability of law enforcement personnel; greater community involvement in the development of law enforcement policies and practices; and improvements to training and recruitment of law enforcement personnel.

27.

bias in stop-and-search decision-making.⁹



Box 1

Colombia: statutory protections against discrimination

Colombia reported the existence of various legal norms designed to protect people of African descent and members of other minority groups from racial profiling by law enforcement officials. These norms include the Political Constitution of 1991, which provides that no person should be discriminated against for reasons of sex, race, national origin, language, religion, political opinion or philosophy, and that all people must therefore receive the same treatment and enjoy the same rights and opportunities. In addition, article 35 of Act 734 of 2002 prohibits any distinction, exclusion, restriction or preference by any public servant based on race, colour, descent or national or ethnic origin that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Box 2





C. Awareness-raising, training and recruitment

30. Efforts to influence the behaviour and decision-making of law enforcement agents require that they be made aware of the context of the communities they serve, and that they fully understand the laws and policies intended to govern their own conduct. Such efforts should take place at the institutional level and in the context of broader reforms that address policies and systems of accountability, as described below. Awareness-raising should be led by key officials responsible for drafting internal policies and by those responsible for internal accountability and training.

31. One approach to raising awareness is through the training of law enforcement agents. Many States, including Australia, Cyprus, Guatemala and Nigeria, provide training focused on human rights and addressing racial discrimination. Box 4 provides a description of awareness-raising workshops organized by OHCHR in Brazil, addressed in particular to government bodies and civil society.

32. Non-discriminatory law enforcement is also supported through the recruiting and retention of officers from diverse backgrounds to make them more representative of the populations they police. This increased representation has the potential to influence the culture of agencies and the attitudes of staff, which, in turn, is expected to produce less biased decision-making. This approach to diverse hiring taken in Sweden is described in box 5.

Box 5

Sweden: diversity in police recruitment

Prior to the introduction of the Spira project in 2005, police in Stockholm had few employees of a non-Nordic background. The project was aimed at increasing ethnic minority representation in the police force, beginning in the borough of Södertälje. Out of 140 applications from members of ethnic minorities, 17 people were employed in various civilian

D. Community engagement

33. Constructive engagement between law enforcement agencies and community representatives contributes to non-discriminatory law enforcement policies and practices. This approach has the potential to improve communication between law enforcement authorities and the community, raise awareness among law enforcement agents of the needs and expectations of the members of the racial, ethnic and religious communities they serve. It can also enable community members to provide input for the development of police policies and hold law enforcement authorities accountable for their policies and practices, for example, through reviews of records, statistics and policing policies. Box 6 presents an example of community monitoring of stop-and-search encounters in London. Similarly, community involvement in training and capacity-building for police in Pernambuco, Brazil, is described in box 7.

Box 6

United Kingdom of Great Britain and Northern Ireland: community monitoring groups and stop-and-search activities (London)

In London, a series of local community monitoring groups have been established within each London borough to review the practice of stop and search by the city's Metropolitan Police Service. Community monitoring groups are made up of members of the community and are supported by a London-wide community monitoring network. Group members may draw on potential sources, including local government, police associations, local charities and community-based organizations, in carrying out their reviews. The role of the groups is to hold police accountable, scrutinize the practice of stop and search, including patterns of stopping and searching members of ethnic minorities, and provide local communities with a voice through which to address their local police in relation to stop-and-search activities. As part of this project, the groups are provided with data on stop-and-search encounters that they can then review.^a

^a Metropolitan Police Authority. "A practical guide to stop and search community monitoring groups", August 2009.

Box 7

Brazil: collaboration between civil society groups and police (Pernambuco)

The Working Group of Experts on People of African Descent reported that, in Pernambuco, Brazil, the Group against Institutional Racism, which was created in 2009, collaborates with the local police force in a number of areas. This collaboration includes providing training and capacity-building for the military police. The group also runs a hotline for reporting racist crimes. In addition, the organization carries out public campaigns against racism, organizes cultural events and conferences and provides support to the Brazilian communities of African descent, including members of the *quilombola* and *terreiro* communities (see A/HRC/27/68/Add.1).

E. Data collection

34. Important components of efforts to challenge racial profiling are the collection and analysis of data on

F. Internal accountability

36. The extent to which law enforcement agents avoid racial profiling practices and adhere to written standards

operations and practices that may be contributing to patterns of racial profiling. The fact that that senior officials have increased supervision of the use of discretionary powers by law enforcement officials in areas related to racial profiling is also important. Ideally, such audits should be carried out with the engagement of members of the broader community, who can help shape questions and present concerns, and of staff at different levels within the organization.

38. Box 9 provides a description of an internal audit conducted by the Toronto Police Service in Canada. Box 10 provides an example of internal accountability that relies directly on data on police tactics routinely collected within the Hertfordshire Constabulary in the United Kingdom in order to examine individual agent conduct and stop and search patterns.

Box 9

Canada: reviewing agency practices (Toronto)

In Canada, the Toronto Police Service conducted an internal audit in 2012, when the Chief of Police initiated a review of the agency's practices in relation to community engagement, focusing on police stops. The exercise involved consultations with a cross section of staff and community members and led to several recommendations, including a new "core value" focused on non-discrimination, the creation of a community advisory committee to advise the agency on issues relating to racial profiling and the development of an early warning system to detect patterns of possible bias among officers.^a

^a Toronto Police Service,

39. Data collected on police encounters can also be used to reflect critically on the broader pattern of police tactics and their impact on minorities. In an example from Spain (see box 11), an analysis of records generated by ethnic and racial monitoring of police stops was used to reshape police policies and practices to minimize patterns of bias.

Box 11

Spain: refocusing police identity checks on the basis of monitored data (Fuenlabrada)

The Open Society Justice Initiative reported that, in Fuenlabrada, police identity checks were monitored through a pilot project to record such checks. An analysis of the monitoring data at the beginning of the pilot project showed high rates of identity checks characterized by officer discretion in deciding whom to stop. The types of checks monitored involved stops conducted in “areas under intensive police control”, as part of “preventive operations” and for “suspicious behaviour”. Possibly because that discretion allowed officers to draw on generalizations and stereotypes, such checks were characterized by a substantial overrepresentation of foreign nationals. Following analysis of the monitoring data, managers modified the way frontline officers were tasked. Over a period of six months, those modifications led to substantial reductions in the three types of identity checks being monitored (areas under intensive police control, preventive operations and suspicious behaviour), of 90 per cent, 76 per cent and 56 per cent, respectively. Importantly, the reduction in those discretionary stops was accompanied by a substantial reduction in the overrepresentation of foreigners during the entire six-month pilot period.^a

^a Open Society Justice Initiative, *Fair and Effective Police Stops*.

G. External accountability

40. The ability of external actors, whether members of the public, community groups or the media or international human rights mechanisms, national human rights institutions or equality bodies, to challenge inappropriate law enforcement practices presents another way to control racial profiling. Those actors' ability to mount such challenges can be supported by ensuring their access to information, data and analyses on agent decision-making and practice or through the exercise of their role in reviewing public complaints.

41. One approach to external accountability is to provide a record of a stop or search to the member of the public involved, including information on the encounter and the reasons it was conducted. This approach provides a form of "on-the-spot" accountability and is often coupled with the data collection approaches described above. Variations of it have been used in several countries, including Bulgaria, Spain and the United Kingdom.

42. External accountability can also be provided by commissions or ombudspersons that are responsible for responding to public complaints about discrimination. Examples can be found in Portugal, South Africa and the United Kingdom. Box 12 provides an example from the Australian Human Rights Commission, which is responsible for public complaints related to discrimination. Box 13 provides an example from the United States, where the Civil Rights Division of the Department of Justice may investigate and bring suit against agencies engaged in racial profiling.

43. External accountability includes having government oversight bodies and civil society groups take an

Box 12

Australia: protection of the rights to non-discrimination (Australian Human Rights Commission)

The Australian Human Rights Commission reported that Australian jurisdictions have legislative prohibitions against racial discrimination. To uphold those standards, the Australian Human Rights Commission has statutorily appointed a Race Discrimination Commissioner with a mandate to investigate complaints under antidiscrimination legislation. Under its complaint-handling function, the Commission considers matters of alleged discrimination on the basis of race and racial hatred. The investigation and conciliation service provides a free and impartial mechanism for parties to resolve complaints relating to alleged racial discrimination without needing to go to court. Many outcomes of complaints resolved through the Commission's investigation and conciliation service extend beyond individual compensation and often include systemic outcomes such as anti-discrimination training or changes in policy. If conciliation fails, an individual may seek a determination by the federal courts.

Box 13

United States of America: bringing suits against agencies engaged in racial profiling

The United States reported that the Civil Rights Division of the Department of Justice may investigate and bring suits against agencies that engage in, or exhibit patterns or adopt

Box 15

Spain: using United Nations human rights mechanisms

The case of *Williams Lecraft v. Spain* involved an African-American woman of Spanish citizenship who was stopped and asked for identity documents by a national police officer in a railway station in 1992. The officer indicated that Ms. Williams Lecraft had been stopped because her appearance suggested that she was more likely to be an undocumented migrant. Ms. Williams Lecraft filed a complaint, which was dismissed by a Spanish national court, and her subsequent appeal to the Constitutional Court of Spain was also unsuccessful.

Ms. Williams Lecraft subsequently took the case to the Human Rights Committee, supported by three civil society organizations: the Open Society Justice Initiative, Women's Link Worldwide and SOS Racismo Madrid. The Human Rights Committee ruled in favour of the complainant, concluding that the incident was a violation of article 26, read together with article 2 (3), of the International Covenant on Civil and Political Rights.

In its views, the Human Rights Committee called for amendments to Spanish provisions regulating police powers to conduct identity checks, noting that race, ethnicity and/or physical characteristics may not be the basis for decisions to conduct a stop for an identity check, except when they are part of a suspect description. The Committee also required that Spain instruct all police forces to issue operational guidance manuals for police officers on following those principles.^a

^a Communication No. 1493/2006, *Williams Lecraft v. Spain*.

V CONCLUSIONS AND RECOMMENDATIONS

45. The practice of racial profiling by law enforcement agencies is contrary to international legal norms, including the principle of non-discrimination and the rights to equality before the law and equal protection of the law. Moreover, evidence shows that racial profiling is not an effective law enforcement tool and should be replaced with more effective approaches. Further evidence suggests that racial profiling may also have negative effects on the attitudes and well-being of the people and communities targeted.

46. In response to negative consequences associated with racial profiling, national law enforcement and government bodies have developed laws and policies that prohibit the generalized use of race, ethnicity and other prohibited grounds of discrimination as a basis for suspicion and decision-making in law enforcement actions. In many cases, those laws and policies were developed with the collaboration of local and international civil society actors, as well as international human rights mechanisms. Member States should prohibit the practice of racial profiling and ensure that any strategies targeting law enforcement officers are accompanied by practical guidance on non-discriminatory decision-making.

47. Member States should also encourage law enforcement agencies to develop targeted training programmes that raise awareness among officers of the various social

18-21669

Published by the Department of Global Communications
and the Office of the High Commissioner for Human Rights

