

FORUM ON MINORITY ISSUES

Eighth Session « Minorities in the criminal justice system »

Addressing the root causes of discrimination in the administration of justice

Statement by the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Mutuma Ruteere

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Mr. President,
Excellencies,
Distinguished delegates,
Ladies and gentlemen,

It is an honor to be here with you today at this eighth Forum on Minority Issues, I would like to thank the Independent Expert on minority issues for leading this initiative. The subject of today's discussion, addressing the root causes of discrimination, is critical for the improvement of efforts to eliminate practices in law enforcement and criminal justice systems which constitute violations of human rights for the individuals and groups targeted by these practices.

It is important to stress that practices such as racial and ethnic profiling are prevalent in everyday law enforcement systems. As I stated in my latest report to the Human Rights Council, practices such as the use of stop and frisk, or stop and check, have disproportionately targeted minority populations who have suffered unequal levels of stops by police forces. . It is all the more pertinent to address this issue as in a context of increased migration fluxes; official border crossings and hubs of transportation, have become places where consistent racial and ethnic profiling takes place. Customs, border, and security agencies routinely subject particular individuals to additional security checks and interviews. Furthermore, in recent years as States have hardened measures to counter threats of terrorism, migrants and minority groups have been particularly affected by the adverse effects of these new law enforcement practices. Moreover, economic crises in various countries have exacerbated levels of existing discrimination.

The development of new technology that purports to create automatically generated "risk profiles" for specific ethnic groups, as well as the use of software by law enforcement agencies have increased concerns that racial and ethnic profiling may become a regularized and permanent fixture of immigration and border control management systems around the world. Recent violence in various parts of the world including Paris, have led to such discussion of increasing screening for

certain groups of people including Syrian, and other refugees from the Middle East. Profiling based on origin and ethnicity not only constitute a violation of the right to nondiscrimination but also lead to further violations of the rights of populations who are in need of international assistance as per existing international provisions on humanitarian assistance and asylum.

In order to safeguard the rights of minorities, States have already enacted a variety of laws to prohibit discrimination. At the international level, several human rights instruments exist to this end. At the national level, some States have adopted laws; policy and institutional frameworks to tackle racial profiling. I would like to share some examples of these legal measures with you today.

In the United Kingdom, the Equality Act 2010 unifies existing non-discrimination laws under a single act, establishing a legal framework to protect the rights of individual and advance equal opportunity. The Act applies to all organizations providing a public service including police, customs and excise, tax, health and safety and immigration, as well prison and probation services. Its aim is to eliminate unlawful discrimination, harassment and victimization by advancing equality of opportunity for minority groups and fostering good relations between minorities and the rest of the community.

In the United States, the Department of Justice last year updated its Guidance Note that highlights good practices and establishes mechanisms to combat racial and ethnic profiling in law enforcement at the federal level. The Guidance Note stipulates that enforcement officers may not use race or ethnicity to any degree in a specific suspect description. While the note does unfortunately not apply to state and local authorities, which conduct most of the law enforcement work, I am pleased to report that the Guidance Note has now been applied by the Department of Homeland Security and the intelligence agencies.

In Sweden, the Aliens Act provides that a person may not be stopped or checked solely on account of skin colour, name, language or other similar characteristics. Institutional frameworks and police codes of conduct have been set up in France and Austria that prohibit discrimination by national police forces, including those carrying out immigration and counter-terrorism functions.

Similarly, I have been informed that at the Brussels Airport in Belgium, an information-based behavioural profiling system that is not linked to race has been implemented, which stresses behavioural risk factors. This allows officers to focus their attention on characteristics other than nationality or ethnicity.

I would like to reiterate my call to Member States that are yet to enact specific legislation outlawing racial and ethnic profiling to work toward doing so. Ethnic and racial profiling by law enforcement agencies should be unequivocally prohibited and punished by law.

In addition to a comprehensive legal framework, it is also crucial that States gather law enforcement data, including statistics disaggregated by ethnicity and race, in order to evidence the prevalence and extent of racial and ethnic profiling. Such data are crucial for identifying the characteristics and scope of discrimination, and developing effective strategies and measuring progress (or regression).

Such data should also be collected on the basis of self-identification and consent of individuals, and be used with due consideration for data protection and privacy guarantees at all stages of the criminal justice system. Of course, concerns over the misuse of the data have arisen, but there are measures that can be set in place to address these concerns. For instance, through the anonymization of data and time limits for retention of personal data, as well as training of civil society and minority groups on data collection methodologies and ensuring their involvement throughout the process. I dedicated my latest report to the General assembly to this subject.

The inclusion of minorities and historically discriminated against groups within the justice system is key to improving diversity throughout the system and developing a culture of non-discrimination and tolerance. States should assess the composition of relevant agencies, and adopt measures to overcome barriers to the recruitment, promotion and retention of members of minorities. These measures should include affirmative actions, such as pro-active recruitment strategies in minority areas, and be specifically targeted to achieve increased participation and upward mobility. Removing formal barriers to recruitment, such as specific physical, educational or other requirements that are difficult for minorities to meet is a good starting point, as is creating of respectful and culturally sensitive working environments. Community outreach is key to this end, as

it can help law enforcement and judiciary officials understand the situation of minorities, their issues and to promote concerns when confronted with the criminal justice system. For instance, in Australia in 2013, the Victoria Police made an important announcement that it would invite communities to comment about its practices in order to take a comprehensive self-examination. It will use the information to publish a report and then institute a new policy on field contacts.

Regarding training and awareness-raising, these measures are undoubtedly a positive step in the right direction, however it is important to note that these initiatives cannot alone eradicate profiling in law enforcement. Ideally they should be implemented in combination with the practices I have previously mentioned. States have begun to combat profiling, yet additional steps remain to be taken in order to effectively address this important issue.

I have been informed that there are positive examples of training and awareness-raising in Ireland and the Netherlands. In Ireland, the “Diversity Works” training program provides intercultural and diversity training for law enforcement officers. In the Netherlands, the Amsterdam Police contracted independent auditors to examine the organization and its work, which resulted in a qualitative study involving interviews of over 50 police officers, which discussed their rationales for deciding who to stop and search. Romania has developed a similar model for assessing the relationship between the police and the Roma community.

Finally, efforts to eliminate discrimination should also stem from outside law enforcement and criminal justice systems. Independent, investigative oversight bodies should have the authority to address allegations of racial and ethnic profiling, and make practical recommendations for policy changes. They should be able to conduct self-initiated investigations, as these activities are fundamental to identifying discrimination and profiling by law enforcement agencies. National institutions responsible for oversight of police, as well as independent regulatory bodies for the judiciary, prosecutors and legal profession, should systematically assess and report on the situation of minorities within the criminal justice process, and take action when they observe discrimination. Oversight and accountability bodies should include members of minorities and have the mandate and technical capacity to address complaints of unfair treatment and abuse against minorities, including

through the collection of data, for use in monitoring direct and indirect discrimination and in conducting self-initiated investigations.

I would also like to share a few good practices in the establishment of oversight and equality bodies in certain countries. In Denmark, Norway and Sweden, for instance, special law enforcement officers are attached to the Prosecutor-General's office who receive and investigate complaints against police officers. In Germany, the NGO "Bureau for the Implementation of Equal Treatment" has successfully challenged in court the practice of identity checks carried out by the border police in trains and train stations which were solely done on the basis of racial and ethnic criteria. These bodies help support internal mechanisms to ensure accountability and transparency.

Although some States have begun to address the issue of profiling, serious efforts remain to be made. The multiplications of reports of racial profiling and resulting violations of rights, such as the unjust deprivation of freedom, or the violation of the physical integrity of the victims of profiling in various parts of the world is extremely worrisome and requires immediate attention especially within the context of discussions to address the heightened threat posed by terrorist extremism.

I would like to conclude by thanking all of those who have worked to improve our understanding of these issues, and who have dedicated their efforts to improving policies and mechanisms that can lead to elimination of practices that endanger the fundamental rights of minorities. I hope that these efforts will continue and grow in strength and effectiveness with all of your collaboration. I thank you for your attention and look forward to an enriching and fruitful dialogue.