

Check against delivery



**STATEMENT BY Ms. MARIE EVELYNE PETRUS BARRY
MEMBER OF THE WORKING GROUP OF EXPERTS ON PEOPLE OF AFRICAN
DESCENT**

**During CERD's Thematic Discussion on Racial Discrimination in Today's World
Findings and possible remedies in relation to Racial Profiling of people of African
Descent**

Geneva, 29 November 2017



Chairperson and members of CERD,
Excellencies,
Ladies and Gentlemen,

It is an honour for me to address you as Member of the Working Group of Experts on People of African Descent and to participate in this important thematic discussion on racial profiling, ethnic cleansing and current global issues and challenges.

Mandate of the working group of experts on the rights of people of African descent

The working group of experts on the rights of people of African Descent has the mandate to study the problems of racial discrimination faced by people of African descent and inter alia “ (c) To submit recommendations on the design, implementation and enforcement of effective measures to eliminate **racial profiling** of people of African descent;”.

In my intervention, I will try to address the three questions that were asked by CERD in the background note for this meeting.

1. *What have been your experiences, challenges, and lessons learned in working to combat racial profiling and ethnic cleansing to date?*

The first challenge to address racial profiling is that racism and prejudice are deeply rooted in mentalities and go back (at least) to the history and first encounters between people of African descent and people from the European continent in Africa at the time that they were deported and enslaved. The dehumanization of African people has been used to organize their deportation and enslavement. These periods of our common history have forged the psychology and perceptions about people of African Descent. People are not always conscious about how prejudiced they are and therefore have difficulties to recognize that racial profiling is racial profiling as it perceived as normal behavior. It is very difficult to recognize a bias and examples showing positive treatment when racial profiling is mentioned would often be provided to counter the fact of racial profiling.

The problem is that over positive behaviors are as discriminatory as negative the negatives ones.

The evidence of occurrences of racial profiling help to define it and allow to find strategies and actions to combat it, provided that it is documented. It can however only be documented when it is recognized.

This is why the role of Human Rights mechanisms and that of a vibrant and organized civil society along research and education has allowed to define and identify, as well as its manifestations.

This said, in all of the Working Group's country visits (Germany, Canada, USA, Italy, Netherlands, Brazil, Panama, UK, Portugal, and Ecuador) the Working Group has found several forms of occurrence of racial profiling of people of African descent and has made recommendations to eliminate them. They are, stop and search, racial profiling by law enforcement agencies for identity checks or, at border control, in employment and housing.

I will give two examples of the challenge, lessons learnt and work to combat racial profiling by the working group of people of African descent.

Working group visit to Germany February 2017

Experience

The Working Group found that racial profiling by police officials is endemic. Civil society sources reported that stops, identification checks, searches and other controls by police are usually targeted at minority groups, including people of African descent. Boys and young men experience day-to-day confrontation with law enforcement officials, with a high risk of imprisonment. The Government informed the Working Group that cases of racial profiling (defined as unjustified targeting of people by police measures only or mainly because of their race, ethnicity, etc.) were being investigated and prosecuted.

The challenge

The lack of an independent complaint mechanism at the federal level fosters impunity, with no redress for victims. The Government informed the Working

Group that independent complaint mechanisms existed at the state level in some states. However, while mechanisms may exist, the lack of information about them hinders access to these mechanisms. During its visit, the Working Group heard testimonies and civil society organizations continue to report about discriminatory identity checks by police on members of ethnic and religious minorities.

The second challenge is that scope of the General Equal Treatment Act is too narrow. It does not cover structural racism or racial discrimination committed by the State. It applies to civil law only. Accordingly, it excludes a wide range of racial discrimination acts committed by the State, such as racial profiling by the police or other law enforcement officials.

Recommendations

The Working Group called for an **end to criminalization** of men of African descent. We requested effective action and cessation of any practice of racial profiling by federal and state law enforcement officials.

We recommended the following actions:

Training: Adopting a comprehensive training strategy and a vetting system during recruitment processes and throughout the career of law enforcement officials to ensure that law enforcement tasks are performed without racial profiling or any other methods leading to racial discrimination;

Prosecutors and judges should receive specialized training in the identification and characterization of racist hate crimes, racial profiling and discrimination against people of African Descent.

Investigation and fight against impunity: The Government should undertake prompt, thorough and independent investigations into all allegations of racial profiling, hold those responsible accountable and provide effective remedies, including compensation and guarantees of non-repetition. It should also conduct monitoring through periodic external, independent audits of the practices of police services.

The second example is the mission to Canada in 2016

Experience

criminal justice system The Working Group was particularly concerned about the over representation of African Canadians in the criminal justice system, which may be attributed to racial bias at all levels of the system, from racial profiling to the exercise of prosecutorial discretion and disparities in sentencing.

The Challenge

Arbitrary use of “carding”, or street checks — the police practice of stopping, questioning and documenting people suspected of a crime — disproportionately affects people of African descent.

The Working Group was particularly concerned about anti-Black racism and evidence that racial profiling is endemic in the strategies and practices used by law enforcement. Consumer racial profiling and the arbitrary use of “carding”, or street checks, disproportionately affects people of African descent.

The Working Group was concerned about excessive use of force and police-involved deaths, especially when responding to cases involving vulnerable people of African descent, such as those who are mentally ill or otherwise in crisis.

The group was also concerned that there is no race-based statistics of fatal police incidents involving people of African descent.

Recommendations

The Working Group recommended that the practice of carding, or street checks, and all other forms of racial profiling be discontinued, that the practice of racial profiling be investigated and the perpetrators sanctioned. There must be a cultural change in law enforcement and greater respect for the African Canadian community.

A question remains However, how can this be done and promoted?

Strengthen Afrocentric education curricula and implement the recommendations made by the Black Learners Advisory Committee in its report on education, Redressing Inequity — Empowering Black Learners, and accepted by the Nova

Scotia Department of Education. (in its report, Expanding from Equity Supports to Leadership and Results).

The provincial ministries should **collect disaggregated data** and ensure adequate remedies are available to African Canadian students impacted by discriminatory effects of disciplinary policies, including racial profiling.

Furthermore, I would add that the results of all investigations should be made public and information should be shared with communities and people of African descent to support the building of trust vis à vis the authorities.

2. How can the CERD Committee strengthen its work against racial profiling and ethnic cleansing, for greater impact on the ground?

The UK is the only European Country that collects desegregated data in relation to ethnicity on stop and search practices.

CERD could look at data collection in all the spheres of human rights. For civil and political rights, it would be good to look at data collection in participation of people of African Descent in elections, in institutions such as parliament, cities and other public administrations and make specific recommendations accordingly to help member states to address racial profiling with a focus.

CERD could continue to encourage the production of data and continue to advocate for desegregated data by age, gender, origin and level of education. We know that CERD looks at this, and looking at it specifically with the lens of people of African Descent in all countries, would make recommendations more targeted to address their concerns.

The same should happen for education, housing, employment, business, the criminal justice system, particularly prison sentences and prison conditions, deaths in custody, immigration detention centers and border controls.

Good practices could be shared with countries and discussions about their feasibility could be offered. Monitoring and following up could be done through reports to treaty bodies and through SDG implementation plans.

For example, in his report to the General Assembly in 2015, Mr. Muturee, Former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance reported a good practice: “The Suffolk County and West Yorkshire police forces issue a receipt to persons who have been stopped, which records details of the reason for the stop, and the identity both of the person concerned and of the police officer. A similar initiative has been developed in the municipality of Fuenlabrada, Spain, with the support of the European Commission.”

The working group believes that such data collection can be a tool to reduce ethnic profiling and to improve trust in the police within minority communities.

CERD could encourage states to do research on the discriminatory behaviors on issues for which states do not realize the level of racial discrimination and its impact on social cohesion.

A good example is The York Research report done in 2016 and submitted to the Ottawa Police service board and Ottawa police service with the title: Race Data and Traffic Stops 2013-15: A report on Ottawa and the police districts.

The study shows that Black Male Drivers aged 16 - 24 were stopped 1238 times, which constituted about 1.5% of the total stops over the two-year period. However, these drivers represent less than 0.2% of the total driving population in Ottawa. This means that young Black male drivers were stopped 8.3 times more than what you would expect based on their population.

This study is a correlational study on the relationship between race, sex, age, and traffic stops in Ottawa. It does not deal with the issue of causality. It does not explain why and how these factors are related or not related. For this reason, the findings only provide a big picture of traffic stops in the entire capital city of Ottawa, covering a two - year period from 2013 and 2015 – a picture which provides a fresh and pioneering perspective on race and traffic stops in Canada.

The report recommends that the Ottawa Police Services Board and Ottawa Police Service determine the sources of the disproportionately high incidences identified in this study through additional research on psychological, organizational, and social issues within the Ottawa Police Service and systemic biases in police practices; police leadership and corporate culture; organizational policing strategies and tactics; human resources policies and practices; institutional mindsets about the association between race and crime; the diversity of the Ottawa Police Service workforce; and race relations dynamics with the diverse communities that constitute the City of Ottawa.

Looking at country contexts CERD could:

- Make recommendations to states to monitor and develop national and transnational legislations in relation to racism on the Internet and social media;
- Use reports done by UN mechanisms to the GA to sensitize member states.
- Work with Civil society who could develop naming and shaming practices
- Focus on education and ensure that history curricula in countries where they are people of African descent include their contribution to modern societies and explain how and why the deportation, sale and enslavement of African human beings took place. Encourage member states to teach the legacy of African-European relations and acknowledge the long-lasting and un recognized discriminatory situation of people of African descent for centuries, in all parts of the world.
- Use archives relating to the deportation and enslavement of people of African Descent and promote the preservation of historical memory for awareness and education.
- Make recommendations to end impunity related to racial profiling and ensure that legislation is passed in compliance to Human rights standards to which the country is a party
- Ensure that gaps in national laws in relation to the right to development, to the eradication of discrimination and racism as well as xenophobia and related intolerance are addressed.
- Request states to criminalize hate speech and incitement to racial hatred who ever commits it.
- Use good practices as examples that promote new standards

- Use the IDPAD resolution and explain how it can help states and their citizens to change perspective if a national program is developed and implemented.
- Promote of oversight bodies on equity and anti-black or minority racism
- Encourage state to provide minorities and the police with training and awareness raising program that could be done jointly thus allowing a better understanding of each group's concerns.
- Encourage community participation and reaching out to communities: Another good practice is the recruitment of people with minority backgrounds to law enforcement agencies. Some States, for example in Europe, have set up specialized diversity units to fight racial and ethnic profiling and to increase their agencies' representativeness and diversity. These units can address diversity issues within the law enforcement agency, and through outreach to minority communities. The danger of such initiatives however is the use of these minorities to racially profile their own minorities because of employment being scarce but also for assimilation reasons.

3. **What are the other pressing/associated issues of racial discrimination in your country/work?**

“Black Identity extremism” becomes a very worrying type of discrimination and includes racial profiling. Research and advocacy should start now before the issue escalates, particularly in the US.

Recommendations

Racial and ethnic profiling in law enforcement constitutes a violation of human rights for the individuals and groups targeted by these practices, because of its fundamentally discriminatory nature and because it exacerbates discrimination already suffered as a result of ethnic origin or minority status. Furthermore, racial and ethnic profiling harms already tenuous relationships between law enforcement agencies and minority communities, at a time when members of minority communities need to be reassured about their inclusion and participation in society. The practice has targeted particular individuals and communities solely on the basis of their race, ethnicity, national origin or religion,

and has attracted disproportionate attention from law enforcement agencies at a time when their resources are scarce.

Combating the use of racial and ethnic profiling in law enforcement constitutes a new and complex challenge. The Durban Declaration and Programme of Action, other international human rights instruments such as the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights, and regional instruments provide a comprehensive framework to combat the use of racial and ethnic profiling. Numerous legal and policy efforts that have been initiated at the regional and national levels to address the use of racial and ethnic profiling and to offer viable and credible alternatives. Legislative measures are central to any strategy to combat discrimination and racism by law enforcement agencies; for this reason, States that have not enacted specific legislation outlawing the use of racial and ethnic profiling to consider doing so.

A clear and unequivocal prohibition of the use of racial and ethnic profiling by law enforcement agencies should be applied. Outlawing racial and ethnic profiling would require modifying national legislation to incorporate an express prohibition on the use of such profiling. The outlawing of racial and ethnic profiling should also be considered at the regional level.

Political leaders and heads of law enforcement agencies should speak out publicly against discrimination and avoid making statements linking race or ethnicity to criminal behaviour, irregular migration or terrorism, in order to repair the harm caused to minority communities by the use of racial and ethnic profiling and to ensure that these groups and individuals are able to fully integrate into their societies.

It is recommended that States gather law enforcement data, including statistics disaggregated by ethnicity and race, which are essential in order to prove the existence and the extent of racial and ethnic profiling. Such statistics are an essential tool for enabling the detection of law enforcement practices that focus disproportionate and unwarranted attention on racial and ethnic minorities based on stereotypes about ethnicity and crime. In order to properly collect such data, close scrutiny of the three main stages of collection, storage and access is required, in order to prevent any possible misuse of the data. This is particularly

important in law enforcement, where there are clear risks that ethnic data could be used to facilitate racial and ethnic profiling, rather than to reduce it. Data protection standards must balance the need of law enforcement to collect and retain data for the purposes of detecting, preventing and investigating crime, against the right to privacy and the presumption of innocence.

When statistics, disaggregated by race and ethnicity, are available on law enforcement actions, they provide an important insight into law enforcement practices and are the cornerstone that proves the use of racial and ethnic profiling. These statistics can be useful for the development of new policies and practices, particularly where census data are not available or appear to be inaccurate, or where there are no available law enforcement data and there are concerns about racial profiling. Similarly, sharing data with minority communities is a positive step taken by some States which should be further encouraged. Investigative oversight bodies should be encouraged to monitor the conduct and practices of law enforcement agencies and to investigate individual complaints. Oversight bodies should have the authority to address allegations of racial and ethnic profiling, and should inform practical recommendations for policy changes in order to eliminate the use of racial and ethnic profiling. Such bodies should also be able to collect data to monitor direct and indirect discrimination and to conduct self-initiated investigations, as these are fundamental in identifying discrimination such as profiling by law enforcement agencies. Law enforcement agencies should adopt a practical and holistic approach to training. Practical training linked to specific powers, actions and activities of law enforcement is usually more effective than general diversity training. Training should be combined with other complementary measures to reduce ethnic profiling, such as supervisory practices and operational procedures, with the participation of minority communities.

Law enforcement agencies should provide their officers with clear standards and instructions on permissible versus impermissible uses of ethnicity, race and national origin in conducting their work. Requiring that law enforcement officers have objective grounds for reasonable suspicion on the basis of a person's behaviour rather than on the basis of their appearance is a fundamental safeguard against ethnic profiling and should be clearly established as a prerequisite before any police or immigration stop. Operational protocols, regulations and training should provide detailed and practical guidance for all law

enforcement officers on how to carry out their duties in full compliance with non-discrimination standards.

A limitation of the discretionary powers of law enforcement agents should be applied to reduce the risks of racial and ethnic profiling. There are several approaches to limiting discretion; they are not mutually exclusive but can be used in a complementary manner. Such strategies may include improving the quality and precision of intelligence-gathering and making sure that law enforcement agents use this information in their decision-making, increasing the supervision of law enforcement officers' discretionary decisions, and enhancing civilians' understanding of their rights and responsibilities in encounters with law enforcement agents and their ability to hold them accountable for their use of their powers. Similarly, civilian monitors, civil society actors and international organizations should be given the necessary access to monitor effectively the checks and controls of the different types of law enforcement agencies.

Information-sharing: information should be disseminated appropriately to the different minority communities. Moreover, law enforcement agencies should welcome and support voluntary contacts and interaction with civilians, which demonstrate commitment to transparency and community oversight. Better collaboration between law enforcement agencies and minority communities would go a long way.

Finally, combating the use of racial and ethnic profiling by law enforcement agencies requires a multi-stakeholder approach. In this regard, the role of civil society is fundamental. Civil society has a role to play in education, and advocacy, including efforts to lobby for the passage of data collection and anti-profiling legislation, as well as to litigate on behalf of individuals who have been victims of these practices by law enforcement agencies

Conclusion

The Working Group's annual sessions and reports to the Human Rights Council and to the General Assembly have addressed the issue of racial profiling and

made recommendations. For ease of reference, you can look at the WGEPAD reports on our website.

The Working Group held an Expert meeting last weekend on addressing racial stereotypes of people of African descent which included racial bias and profiling of people of African descent in the administration of justice. A report on this theme with recommendations will be presented to the UN General Assembly in 2018.

Racial profiling is more commonly known in law enforcement and state authorities related actions. However, Racial profiling should also be considered within the scope of ESCR rights: In education, jobs, housing, developing business. The whole human rights spectrum should be looking into and alignment of recommendations and actions with the SDG. This would provide a basis for benchmarks and measurement of progress and would make states more accountable although the SDG are not binding.

Criminalization of people of African descent advocating for their rights is seriously disturbing including the new term used by the FBI:” Black identity extremists” which leads to make the victims look like the perpetrators. This is a new form of racial stereotyping and structural racism. The issue of structural racism and the resistance of states to address it has to be looked at thoroughly as this lead to the criminalization of people of African Descent requesting their rights.

The Low involvement in and funding of the IPAD is worrying as we are in its third year and many countries have been reluctant to do an action plan.

The Lack of binding international standards that looks specifically at the rights of people of African descent and other groups that are racially profiled is also a major obstacle to the realization of these rights.

Good practices of government can be put in place. The problem is knowledge about these efforts through information and dissemination.

If time allows

Good practices to present if time allows or during the discussion:

“From the SP report Mr. Muturee

In addition to external civilian oversight of law enforcement, two other models exist in Europe. Denmark, Norway and Sweden have special law enforcement officers attached to the Prosecutor-General’s office who receive and investigate complaints against police officers.

In France, the National Commission on Police Ethics, an independent administrative authority created in 2000, ensures compliance with ethics rules by French law enforcement officers. Individuals can present¹ complaints to the Commission via a member of the National Assembly or the Senate, the Ombudsman’s office, the High Authority against Discrimination and for Equality, the Children’s Defender, or the General Supervisor of Places of Detention and Deprivation of Liberty.”

(The problem with this practice is that people are not aware of it and it serves mostly to prove that the state is doing something).

In that connection, in Canada, the Ontario Human Rights Commission published recommendations to end racial and ethnic profiling in a 2003 report entitled “Paying the price: the human cost of racial profiling

In Northern Ireland, the Human Rights Commission examines cases of racial and ethnic profiling at borders by immigration officers, using direct observation and interviews with immigration officers about their decision-making.

Also regarding the United Kingdom, the Metropolitan Police Authority in London has set up a scrutiny panel on stop and search, which has statutory responsibility to hold the Metropolitan Police Service accountable for its performance.

Work of the working group

The working group visits two countries per year. It also issues allegation letters, Urgent appeals and press releases. Some of them are done jointly with other mandates. For example, on March 21, 2017 a joint press release was issued with the title: “Act now against racial profiling and incitement to racial hatred”.

To address racial profiling, among other issues, the group will support the promotion and implementation of the IDPAD.