



COMMENT ON THE DRAFT GENERAL RECOMMENDATION NO.36 ON PREVENTING AND COMBATTING RACIAL PROFILING

21 June 2019

INTRODUCTION

The [International Movement Against All Forms of Discrimination and Racism \(IMADR\)](#) is an international non-profit, non-governmental human rights organisation devoted to eliminating discrimination and racism, forging international solidarity among discriminated groups and advancing the international human rights system. IMADR is grateful to the UN Committee on the Elimination of Racial Discrimination (CERD) for providing stakeholders the opportunity to comment on the draft General Recommendation No.36 on preventing and combatting racial profiling (hereafter draft GR). Our submission provides paragraph-by-paragraph inputs to the draft GR based on international and regional human rights standards on racial profiling against discriminated groups and individuals such as indigenous peoples, minorities and migrants.

II. APPROACH ADOPTED

Paragraph 4 should include the **General Recommendation No. 29 on descent** which recommends States parties to tackle descent-based discrimination in the administration of justice, in particular by organising *“training programmes for public officials and law enforcement agencies with a view to preventing injustices based on prejudice against descent-based communities”*.¹ The **General Recommendation No. 30 on discrimination against non-citizens** should be added to the same paragraph which recommends States parties to *“[e]nsure that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping”*², in addition to its recommendations in the area of the administration of justice.

III. RESOURCES OF THE CONVENTION

In paragraph 13, it is suggested to recall **the definition of racial discrimination provided by Article 1.1** in order to stress **discrimination in effect** by racial profiling in the enjoyment of human rights.

IV. DEFINING AND UNDERSTANDING RACIAL PROFILING

In paragraph 16, **data mining** should be included as one of the examples of racial profiling.³ In addition to home searches, it is recommended to also list **businesses** and **religious sites**.⁴

¹ CERD General recommendation No. 29 on article 1, paragraph 1, of the Convention (Descent), paragraphs (u) – (z)

² CERD General recommendation No. 30 on discrimination against non-citizens, paragraph 10

³ European Union Agency for Fundamental Rights (2010), 'Towards More Effective Policing. *Understanding and Preventing Discriminatory Ethnic Profiling: A Guide*', page 13-14

⁴ See the report of the Special Rapporteur on the human rights of migrants on the impact of the criminalization of migration on the protection and enjoyment of human rights, (2010) A/65/222, paragraph 32



In paragraph 17, **disability**⁵ and **property**⁶ should be explicitly listed as prohibited grounds.

V. CONSEQUENCES OF RACIAL PROFILING

In paragraph 18, it is suggested to add “and **society as a whole**” at the end of the first sentence, since racial profiling can cause communal tensions and mistrust.⁷ It should be pointed out that **the level of hostility** between individuals and police or other law enforcement can be worsened by racial profiling⁸, due to its **disproportionate impacts** on persons belonging to racially discriminated groups⁹. Daily encounters between individuals and law enforcement officials may lead to aggression and conflict because of the increased tensions by racial profiling, which expose both sides to danger.¹⁰ The link between discriminatory policing and mass violence has been identified in the UK since the early 1980s, and a similar pattern was observed in France in 2005.¹¹ Therefore, the paragraph 18 should include that racial profiling can be a cause of **aggression and conflict**, violating human rights and fundamental freedoms guaranteed by the Convention, in particular **the right to security of the person and protection by the State against violence or bodily harm (Article 5)**. In addition, racial profiling goes contrary to **the presumption of innocence**,¹² which may result in **the failure to identify and protect victims of human rights violations**, since a certain group tends to be profiled as a security threat.¹³ Lastly, it is unclear which evidence is referred in the last sentence of paragraph 18 - “[i]n turn, some evidence suggest that racial profiling may lead targeted communities to embracing illegitimate or criminal lifestyles and contribute to increased crime and delinquency”.

VII. RECOMMENDATIONS

A. LEGISLATIVE MEASURES

In paragraph 27, colour, descent, nationality, or national or ethnic origin should be explicitly listed as prohibited grounds in line with Article 1 of the Convention. In addition, recommendations to States parties should include **reviewing, amending or repealing legal provisions** that may lead to or allow racial profiling,¹⁴ including counter-terrorism laws.¹⁵

B. HUMAN RIGHTS EDUCATION AND TRAINING

In paragraph 28, training should be provided for police to understand **the social context, cultural practices,**

⁵ Convention on the Rights of Persons with Disabilities, Articles 5, 12 and 13

⁶ International Covenant on Civil and Political Rights, Article 26. International Covenant on Economic, Social and Cultural Rights, Article 2.

⁷ European Union Agency for Fundamental Rights (2010), ‘Towards More Effective Policing. *Understanding and Preventing Discriminatory Ethnic Profiling: A Guide*’, page 18-19

⁸ Ibid, page 44

⁹ CERD/C/NLD/CO/19-21, paragraph 13 (d). CERD/C/GBR/CO/21-23, paragraph 26.

¹⁰ Ibid

¹¹ Ibid, page 37-38

¹² See the report of the Special Rapporteur on the human rights of migrants on the impact of the criminalization of migration on the protection and enjoyment of human rights, (2010) A/65/222, paragraph 33

¹³ See the report of the Special Rapporteur on trafficking in persons, especially women and children on early identification, referral and protection of victims or potential victims of trafficking in persons in mixed migration movements, (2018) A/HRC/38/45, paragraph 38

¹⁴ CERD/C/DEU/CO/19-22, paragraph 11

¹⁵ CERD/C/GBR/CO/21-23, paragraph 18-19



values and languages of communities.¹⁶ In order to properly handle the cases of racial profiling, training should also be provided for **lawyers and judges.**

Additional paragraph on **human rights education for the public** needs to be added, providing that “*States parties should strive to **supply the requisite legal information to persons belonging to the most vulnerable social groups, who are often unaware of their rights***”¹⁷ concerning racial profiling. Institutions such as **legal information centres, free legal help and advice centres** should be promoted in the marginalised areas.¹⁸ **Cooperation with civil society** should be included for educating the population as part of human rights education measures.¹⁹

In addition, in order to reduce negative impacts of their conduct, training should also aim to improve **the quality of the stop** which law enforcement officers treat the persons they have stopped in a respectful, professional and transparent manner including their ability to explain a reason for the stop.²⁰

C. RECRUITMENT MEASURES

With regard to a diverse workforce at law enforcement agencies in paragraph 29, it could include the recruitment of **multilingual staff** and **the use of qualified interpreters,**²¹ for indigenous and minority languages spoken by the communities.

D. DIALOGUE WITH COMMUNITIES

In paragraph 30, the term “**community oriented policing**” could be used which is a widely adopted approach.²² Community oriented policing includes introducing **community liaison officers** including women,²³ maintaining communication channels to foster mutual trust and developing strategies together at the local level to review and revise relevant policies and practices through establishing **permanent liaison mechanisms** with communities.²⁴

E. DISAGGREGATED DATA

In addition to the ethnic origin of targeted members, other characteristics such as colour, descent, national origin, sex, gender, age, religion and other prohibited or intersecting grounds should be included in the collection of disaggregated data. In order to ensure the protection of privacy, the **informed consent** should be

¹⁶ See the report of the Special Rapporteur on minority issues on minorities and the criminal justice process, (2015) A/70/212, paragraph 24

¹⁷ CERD General recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, paragraph 7

¹⁸ Ibid, paragraph 8

¹⁹ CERD General recommendation No. 29 on article 1, paragraph 1, of the Convention (Descent), paragraph (uu)

²⁰ European Union Agency for Fundamental Rights (2010), ‘Towards More Effective Policing. *Understanding and Preventing Discriminatory Ethnic Profiling: A Guide*’, page 60-61

²¹ See the report of the Special Rapporteur on minority issues on minorities and the criminal justice process, (2015) A/70/212, paragraph 24

²² Ibid, paragraph 98

²³ See the Recommendations of the Forum on Minority Issues at its eighth session: Minorities and the criminal justice system (2016) A/HRC/31/72, paragraph 32

²⁴ Ibid, paragraph 80



asked from the persons who have been subject to stop and search for collecting such data for the purpose of eliminating racial profiling, in addition to anonymity.²⁵

F. ACCOUNTABILITY

Paragraph 32 should include “***the right and duty of any police official or State employee to refuse to obey orders or instructions that require him or her to commit violations of human rights***”, in this context – racial profiling, “***without fear of punishment***”.²⁶

Vetting system should be part of accountability measures against law enforcement officials who have resorted to racial profiling.²⁷ Recommendations in paragraph 32 should include carrying out **prompt, thorough and impartial investigations** into allegations of racial profiling, and providing **effective remedies**.²⁸ Such remedies include **compensation** and **guarantees of non-repetition**.²⁹ States parties should establish **independent oversight mechanisms**³⁰ to monitor and review policies, programmes and practices of policing. In parallel, **independent complaints mechanisms**³¹ should be in place in order to receive and handle complaints of racial profiling. Complaints mechanisms can range from **specialised complaints bodies** within/outside the police, **equalities bodies**, to **criminal and/or civil courts**.³² **Suspension** can be applied against law enforcement agents whom the complaints were brought against for the period of the investigations.³³ **Protection from intimidations and reprisals** should be guaranteed for victims and their families,³⁴ as well as complainants, witnesses, and those assist or participate in the complaint procedure³⁵.

In paragraph 33, civilian monitoring of law enforcement activities should include **the use of new technologies** like video recording as advocacy tools in uncovering human rights violations by law enforcement officials during encounters.³⁶ The paragraph should add that civil society organisations can contribute to build a **constructive relationship with the police and racially discriminated communities**.³⁷

²⁵ European Union Agency for Fundamental Rights (2010), ‘Towards More Effective Policing. *Understanding and Preventing Discriminatory Ethnic Profiling: A Guide*’, page 64

²⁶ CERD General recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, paragraph 13

²⁷ CERD/C/DEU/CO/19-22, paragraph 11.(e)

²⁸ CERD/C/BLR/CO/20-23, paragraph 24. (a). CERD/C/KGZ/CO/8-10, paragraph 18.(c)

²⁹ CERD/C/DEU/CO/19-22, paragraph 11. (f). CERD/C/JPN/CO/10-11, paragraph 24

³⁰ CERD/C/CAN/CO/21-23, paragraph 16. (a). CERD/C/GBR/CO/21-23, paragraph 27

³¹ CERD/C/DEU/CO/19-22, paragraph 11.(d)

³² European Union Agency for Fundamental Rights (2010), ‘Towards More Effective Policing. *Understanding and Preventing Discriminatory Ethnic Profiling: A Guide*’, page 58

³³ CERD General recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, paragraph 17.(e)

³⁴ Ibid, paragraph 17.(d)

³⁵ See the Recommendations of the Forum on Minority Issues at its eighth session: Minorities and the criminal justice system (2016) A/HRC/31/72, paragraph 91

³⁶ Ibid, paragraph 36

³⁷ Ibid, paragraph 102