**Statement by Ms. Gay McDougall**

**Member of the Committee on the Elimination of Racial Discrimination**

Thank you Chairperson for this opportunity to make some brief comments about the phenomenon of racial profiling. First I want to talk about what it is and how and why it occurs. I will make brief comments about legal and policy regimes that have attempted to address the phenomenon and finally I will talk about strategies to address the biases that underlie the practice.

In the US we refer to the experience by saying we were stoped for the offence of “Driving while Black.” Racial or Ethnic profiling occurred when police or other people with power use generalisations based on race, ethnicity, religion or national origin to subject an individual to stops, searches, harassment, intimidation and often to arrest without warrant. It is often a means of establishing that the person stopped is subservient to the will of law enforcement even when absent credible suspicion of a crime. In societies where racial or ethnic communities are deeply divided it is often a conscious tool of humiliation. Racial discrimination in law enforcement becomes an indication of the marginal status of groups who are discriminated against and a signal that they will likely suffer racial discrimination in their other interactions with the State.

In less charged situations in which the social distance between different communities is broad, profiling tactics by officials may be the result of unconscious bias along with inadequate training and supervision. It happens when police or other law enforcement officers rely on stereotypes rather than objective facts and evidence in targeting persons for attention. Racial profiling occurs when police target people because of who they are, how they look or how they worship rather than because of what they have done.

In societies where these realities exist, the experiences of being stopped by “the authorities” can happen so often that it is an experience shared by a near majority of the victimised group. Even President Barack Obama spoke publicly about being stopped for “Driving while Black.”

Profiling describes the disproportionate targeting of minorities in the use of tactics such as identity checks, stops and searches, raids, surveillance, fining practices, and arrests, particularly for low level offences. As the representative of the Open Society told the Regional Conference of the Decade on African Descendants: People of color are policed differently to white people, and so are neighborhoods of color. Institutional decisions, such as the use of specific enforcement techniques and deployment patterns, like “stop and frisk” or “the broken windows tactic”impact on ethnic groups unequally. So to be clear, Profiling is not just about the bias of individual officers, it is about institutional decisions to police whole communities disproportionately.

Although the contexts vary greatly, it is a practice that has been identified in countries across the globe. The Special Rapporteur on contemporary forms of racism, in his most recent report[[1]](#footnote-1) has observed that there are increasingly prevalent manifestations of racial or ethnic profiling globally. The Committee on the Elimination of Racial Discrimination in our Concluding Observations has repeatedly raised concerns and made critical observations about the negative impact of profiling in numerous countries.

Many of the concerns raised by CERD have focused on difficulties faced by members of certain minorities, such as Muslims in Europe and North America and people of African Descent who are frequently profiled and subjected to arbitrary identity checks , “Stop and frisk” operations, and traffic stops by law enforcement officers.

Counter-terrorism and concerns about border security have combined with increasing anti-immigration sentiments to be a further driver of profiling. Such concerns motivate enhanced security measures and surveillance policies enacted in relation to counter-terrorism efforts. Racial and ethnic profiling occurs at points of entry into States, where customs and border agencies may force certain individuals or groups to undergo additional security checks and interviews. Profiling in the context of immigration may also limit the ability of individuals to travel, such as when States refuse to issue birth registration and identification documents to members of certain ethnic groups.

And the impact of various terror attacks within Europe by citizens has lead a “home-grown terrorists” logic being used against citizens and long term residents who are considered to have ethnic characteristics.

It is also worth noting that profiling is prevalent in criminal justice systems where there is often also an over-representation of minorities at other points in the criminal justice system: in pre-trial detention, those receiving harsher sentences and as convicted prisoners. Bail regimes generally operate against minorities who because of economic exclusion in the larger society fail to have means to pay bail. This over-representation in the criminal justice system tends to re-enforce the prejudices of law enforcement officers on the street and their presumptions that it is legitimate to stop and frisk minorities because they are most likely to be guilty of something.

**The Unlawful Nature of the Practices**

These practices violate three of the most fundamental principles of human rights: the right to non-discrimination based on race or ethnicity, the right to equality under law and the guarantee of due process of the law. These principles are the anchors of the International Convention on the Elimination of all forms of Racial Discrimination and are also core principles in most national legal systems. Ethnic profiling is clearly prohibited under European and international law. Both the United Nations Committee on the Elimination of Racial Discrimination (CERD) and the Council of Europe European Commission against Racism and Intolerance have made clear that ethnic profiling violates the prohibition against discrimination.

Litigation challenging racial and ethnic profiling by police or immigration officers has been filed in national courts and a case is pending in the European Court on Human Rights.

Additionally, national Parliaments and the US Senate have passed legislation to ban and sanction the use of profiling tactics. And Codes of Conduct in administrative law governing national police and immigration services in many countries make clear that there is a duty of non-discrimination that must be respected by officers of the law.

**Promising Practices being tried to End Profiling**

There are some promising practices being tried to eliminate profiling. When officers are allowed unmonitored discretion to determine who to stop and search people, disproportionality increases. The more license officers have to stop whoever they want, the more likely they are to rely on prejudices and stereotypes, leading to more ethnic profiling.

Ethnic profiling can be reduced by limiting officer discretion in selecting individuals for law enforcement controls and targeting their use of these powers more precisely. These approaches must go hand in hand with increasing supervision of law enforcement officers’ discretionary decisions.

There are several approaches to limiting discretion; they are not mutually exclusive but can be used in a complementary manner.

Limiting Officer Discretion:

For example, include two key safeguards: (1) the requiring a threshold of reasonable suspicion based on objective facts that link to the specific individual, and (2) mandating that stops and searches be recorded and monitored. Reasonable suspicion can never be supported on the basis of personal characteristics alone without the supporting intelligence or information.

Collecting, Monitoring and analysing Data:

Gathering ethnic statistics on police use of stop-and-search powers makes it possible to monitor effectively how police use these powers. Data can be generated by use of stop forms that include ethnic data to monitor officers’ performance. In some places this has pushed officers to rely on indicators of suspicion—rather than superficial appearance—in deciding whom to stop.

The ethnic data that is collected should be made public particularly given ongoing concerns in many ethnic minority groups regarding the use and potential abuse of ethnic statistics. And of course, it is essential that ethnic monitoring systems be introduced with the knowledge, consent, and preferably participation of all stakeholders—minority communities and the general public, as well as the law enforcement agencies involved.

The United Kingdom publishes national stop and search statistics, including data from all 43 police forces in England and Wales. This has focused political and media attention on the issues of ethnic disproportionality in stops and searches, while also enabling comparisons between different police forces and agencies.

Oversight Bodies and Complaints Mechanisms:

Law enforcement oversight bodies and complaints mechanisms can only address ethnic profiling if they have the ability to generate and monitor law enforcement data—including statistics disaggregated by ethnicity. This should be used to prove the existence and extent of ethnic profiling, as well as to investigate individual complaints.

Internal complaints mechanisms are often viewed with considerable mistrust by citizens in many countries due to a perceived lack of independence and impartiality. The best practice is to establish external (civilian) oversight bodies.

Other models feature special officers attached to the Prosecutor General who receive and investigate complaints against police officers. There are also hybrid internal-external models of complaint commissions that include both police and expert (judges, lawyers, etc.) civilian members.

Improving the Quality of Encounters and Civilian Participation:

Enhancing civilians’ understanding of their rights and responsibilities in encounters with law enforcement and their ability to hold law enforcement accountable for their use of their powers is critical to improving the quality of the contact between law enforcement and civilians.

General principles of good practice in improving the quality of police-civilian encounters include:

* Officers should be required to inform people they stop and search of the reasons for the action, and provide written information on how to make a complaint.
* Officers should be required to be polite and be prohibited from the use of any racial, ethnic or other slurs.
* Mechanisms should be established to obtain community feedback on the quality of encounters.

Repeated Training, Reinforced Discipline, Incentivise positive practice:

Training alone, without additional measures to address supervisory practices and operational procedures, does not offer an adequate response to ethnic profiling. This is particularly true where training fails to explicitly admit the problem and provide officers with practical skills that can reduce the influence of stereotypes.

Effective training must: 1)admit the problem of racism and unconscious bias and demonstrates how it happens; 2) makes it clear that profiling is a violation of the law; 3)explains applicable legal standards and provides practical examples of correct and incorrect use of police powers; 4) address both the quality of encounters and quantitative disproportionality; 5) where possible, include members of ethnic minority communities in its design and delivery. Finally, training cannot be a one-off affair, must be coupled with tough and swiftly imposed discipline for violations and it is useful if positive practice is commended.

*Sources:*

*Ethnic and Racial Profiling in Europe, USA, Asia and Australia - Referenced from Open Society’s Justice Initiative Reports, the Black Lives Matter Resources, the Australian Police Accountability Project, the Ontario Human Rights Commission Report and New Racial Missions of Policing: International Perspectives on Evolving Law-Enforcement Politics, compilation of essays by Paul Amar.*

1. [Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/113/80/PDF/G1711380.pdf?OpenElement) [↑](#footnote-ref-1)