**Commission on Human Rights of the Philippines**

**Comments on the Draft General Recommendation No. 36 of the Committee on the Elimination of Racial Discrimination on Preventing and Combating Racial Profiling**

**28 June 2019**

1. The Commission on Human Rights of the Philippines (herewith the Commission)[[1]](#footnote-1) submits to the Committee on the Elimination of Racial Discrimination (CERD), its comments to the Draft General Recommendation No. 36 of the CERD on Preventing and Combating Racial Profiling.
2. This submission utilized the Commission’s own documentation of independent monitoring activities and statements which were subjected to internal deliberations of our Commission En Banc (CEB) and also with consideration of the local and international reports from government, civil society, the media, and international non-government organizations in relation to this concern.

**Comments on IV. Defining and understanding racial profiling**

1. The draft general recommendation provides a clear message that racial profiling is a human rights violation albeit it is not explicitly mentioned in the ICERD.
2. However, the scope of racial profiling in the draft as being limited to criminal activities and law enforcement should be reexamined to include civil transactions. For example, it should also be considered as racial profiling if a state housing authority should deny to grant socialized housing benefits to a member of an ethnic group, which is associated with a terrorist group.
3. The present draft gives the impression that only law enforcement agencies would be liable for racial profiling, which is restrictive.
4. More so, the practicability of holding accountable a state agent should be discussed in the general recommendation, especially if the state agent could cite other reasons, other than ethnicity, for denying the benefits. With this draft general recommendation in mind, it is possible that the states may still circumvent the prohibition on racial profiling by merely saying that they do not rely on the ethnicity of the person but on other distinctions that make real difference.
5. More efforts should be exerted to define racial profiling to leave no room for doubt on its meaning and scope.

**Comments on V. Consequences of racial profiling, particularly on par. 18.**

1. The draft general recommendation should further highlight that racial profiling is the effect of historical biases by one ethnic group against another due to previous events that result to negative impressions, leading further to false generalizations. For example, in the Philippines, there is an assumption among the military that members of indigenous peoples are joining non-State armed groups or rebel groups.[[2]](#footnote-2) This is only their assumption as these non-State armed groups or rebel groups are staying in areas where indigenous peoples’ communities are situated.

**Comments on VI. Racial biases associated with artificial intelligence, particularly on par. 21.**

1. The draft general recommendation points out the inaccuracy and bias in artificial intelligence (AI) that may result to racial profiling. However, the AI merely reflects the prejudices of its makers who would have negative impressions against other ethnic groups due perhaps to past events. The AI may not be the problem. It may also be inaccurate to portray that law enforcement only relies on AI.
2. More so, the draft has not expounded on the potential role of the judicial system as deterrent of racial profiling. It would be more convincing if the draft would cite data on where the courts are, the nature of the cases being tried related to racial profiling, among others.

**Comments on VI. Racial biases associated with artificial intelligence, particularly on par. 24.**

1. The following excerpt should be substantiated with evidence:

"24. Biases in the use of artificial intelligence are also worrying in the judicial system. Increasingly, when applying a sanction, deciding whether someone should be sent to prison, bailed out or receive another punishment, States are resorting to the use of algorithms, in order to foresee the possibilities that an individual may commit one or several crimes in the future. Authorities gather information regarding the criminal history of the individual, their family and friends, their social conditions, including their work and academic history, in order to assess the degree of "danger" posed by the person, from a score provided by the algorithm, which usually remains secret."

1. The Philippine criminal laws have institutionalized the concepts of recidivism and habitual delinquency as aggravating circumstances. However, such provisions in the Penal Code do not rely on ethnicity but on past criminal records of someone who is presently facing criminal prosecution of offenses he committed several times before.
2. The procedural rules on bail considers if the accused is a flight risk and the amount of bail is set depending on the nature of offense/s committed. A hearing is required for provisional liberty.

**Comments on VII. Recommendations**

1. Under B. Human rights education and training, focus should also be given in providing trainings for the government service providers, such as educators, registration agencies, etc.

**Suggestions to include in VII. Recommendations**

1. The draft should also give guidance on the responsibility of media, including social media, in portraying racial or ethnic groups as being related to criminal activities. Media, state-owned or not, has the impact of putting in the minds of society prejudices that are wrong. As such, the general recommendation should give the guidance on the extent by which the state could regulate media in order to address the problem of racial profiling.

1. As the National Human Rights Institution (NHRI) of the Philippines, the Commission on Human Rights of has the mandate vested by the 1987 Philippine Constitution and the Paris Principles to promote and protect the full range of human rights including civil and political rights, and economic, social and cultural rights. It has the responsibility to regularly report and monitor human rights situations and violations, and recommend steps in advancing the realization of human rights and dignity of all. The Commission has “A”-status accreditation from the Sub-Committee on Accreditation, and is a member of the Global Alliance of National Human Rights Institutions (GANHRI). [↑](#footnote-ref-1)
2. Office of the High Commissioner on Human Rights, The Philippines: Renewed allegations against UN experts are “clearly retaliation,” 1 May 2019, *available at* <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24538&LangID=E> (last accessed 28 June 2019). [↑](#footnote-ref-2)