

 **Written submission by the Secretariat of the European Network of Equality Bodies (EQUINET) to the CERD Committee regarding the draft General Recommendation No. 36 on preventing and combating Racial Profiling.**

**Introduction**

Equinet, the European Network of Equality Bodies, brings together 49 public organisations from 36 European countries, which are empowered to counteract discrimination as national equality bodies across a wide range of grounds.

This written submission draws on the outcomes of the seminar, “Equality Bodies Countering Ethnic Profiling”, co-organized by EQUINET and the Open Society Justice Initiative in November 2018, and the resulting Equinet [Factsheet](http://equineteurope.org/wp-content/uploads/2019/05/equinet_factsheet-ethnic-profiling_a4_def2_web.pdf) and [Compendium of Promising Practices](http://equineteurope.org/wp-content/uploads/2019/05/equinet_compendium-ethnic-profiling_a4_def_web.pdf) published in April 2019. The seminar brought together more than 30 Equality Bodies from across Europe with civil society representatives and other expert speakers to discuss the consequences of ethnic profiling and the roles equality bodies’ in countering ethnic profiling. The results helped develop a Factsheet and a Compendium of Promising Practices both of which can be used by civil society organizations, international and regional human rights mechanisms, equality bodies and NHRIs, and government agencies to understand this phenomenon and use its findings to combat ethnic profiling. Our submission also refers to international and regional human rights standards, CERD country observations and General Recommendations. Equinet thus proposes that the following suggestions could be taken into account by the Committee when finalising its Recommendation.

**II. Approach Adopted**

§4. The following could be explicitly mentioned as general recommendations relevant to ethnic profiling:

* General recommendation XXIX on article 1, paragraph 1,
of the Convention (Descent) in view of its provisions regarding training for public officials and law enforcement agencies.
* General recommendation XXX on discrimination against non-citizens as regards to its provisions recommending states to ensure non-discrimination in the fight against terrorism as well as the absence of racial and ethnic profiling.

**IV. Defining and understanding racial profiling**

§16. Fines, vehicle inspections and data mining[[1]](#footnote-1) could be included as examples of racial profiling.

**V. Consequences of racial profiling**

§18. The first sentence could read "research indicates that racial profiling has negative effects on the attitudes and wellbeing of the people and communities it targets, and has ripple effect on society as a whole" since racial profiling can cause communal tensions and mistrust.[[2]](#footnote-2) It could be pointed out that the level of hostility between individuals and police or other law enforcement can be worsened by racial profiling[[3]](#footnote-3), as it results in disproportionate police attention on minority ethnic groups and distributes criminal justice unequally across society[[4]](#footnote-4). 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[[5]](#footnote-5). Thus, this paragraph could include that racial profiling can be a cause of aggression and conflict, violating human rights and fundamental freedoms guaranteed by the Convention, in particular article 5 on the right to security of the person and protection by the State against violence or bodily harm. It could also be added that racial profiling can lead to the violation of other fundamental rights, including freedom of movement, freedom of religion and belief and right to privacy[[6]](#footnote-6). In addition, the lack of objective evidence used in racial profiling goes contrary to the presumption of innocence[[7]](#footnote-7) which may result in the failure to identify and protect victims of human rights violations, because of a tendency to profile certain groups as a security threat[[8]](#footnote-8).

**VII. Recommendations**

**A. Legislative measures**

§27. All grounds listed in Article 1 of the Convention could be explicitly listed as prohibited grounds. States parties could be recommended to clearly define in their legislation terms such as terrorism and extremism, which are often too broad and can be widely interpreted, leading to increased profiling of individuals on grounds of their ethnicity and/or religion[[9]](#footnote-9). In addition, recommendations to States parties could include reviewing, amending or repealing legal provisions that may lead to or allow racial profiling[[10]](#footnote-10) including those relating to counter-terrorism[[11]](#footnote-11), immigration nationality, banning or deportation of noncitizens[[12]](#footnote-12).

**B. Human rights education and training**

§28. Training should be provided for police to understand the social context, cultural practices, values and languages of communities.[[13]](#footnote-13) In order to properly handle the cases of racial profiling, training should also be provided for lawyers and judges[[14]](#footnote-14). Within these trainings, the Recommendation should include adopting a specific module on the definition of racial discrimination, in line with article 1 of the Convention[[15]](#footnote-15). However, training sessions could easily serve as a cover for law enforcement to seemingly address ethnic profiling while failing to change policy or practice. This underlines the importance of combining training with longer-term initiatives that include leadership, strong policies on ethnic profiling and monitoring police actions[[16]](#footnote-16).

**C Recruitment measures**

§29. It could also be recommended to State parties to adopt a vetting system for the recruitment of law enforcement officials[[17]](#footnote-17) and ensure that promotions are subject to scrutiny of the official as regards racial discrimination and racial profiling[[18]](#footnote-18).

**E. Disaggregated data**

Independent institutions such as equality bodies and NHRIs in their work on research, cases and/or inquiries should have the power to request police and other authorities to provide access to the disaggregated data gathered[[19]](#footnote-19).

**F. Accountability**

§32. Should be included “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”[[20]](#footnote-20). Recommendations should include carrying out prompt, thorough and impartial investigations into allegations of racial profiling, and providing effective remedies[[21]](#footnote-21), including compensation and guarantees of non-repetition[[22]](#footnote-22).

§34. It should be added that States parties are recommended to establish independent oversight mechanisms[[23]](#footnote-23) to monitor and review policies, programmes and practices of policing, going beyond addressing individual complaints. Equality bodies could be given such a role as long as they receive adequate powers, funding and resources, to be empowered to regularly monitor the potential use of racial profiling. Victims and their families[[24]](#footnote-24) as well as complainants, witnesses, and those who assist or participate in the complaint procedure[[25]](#footnote-25) should be protected against reprisals and intimidation.

1. . Equinet (2019), 'Equality Bodies Countering Ethnic Profiling: Focus on Law Enforcement Authorities in Europe'. [↑](#footnote-ref-1)
2. . European Union Agency for Fundamental Rights (2010), ‘Towards More Effective Policing. Understanding and Preventing Discriminatory Ethnic Profiling: A Guide’, page 18-19 [↑](#footnote-ref-2)
3. . Ibid, page 44 [↑](#footnote-ref-3)
4. . Equinet (2019), 'Equality Bodies Countering Ethnic Profiling: Focus on Law Enforcement Authorities in Europe'. CERD/C/NLD/CO/19-21, paragraph 13 (d). CERD/C/GBR/CO/21-23, paragraph 26. [↑](#footnote-ref-4)
5. . European Union Agency for Fundamental Rights (2010), ‘Towards More Effective Policing. Understanding and Preventing Discriminatory Ethnic Profiling: A Guide’, page 18-19 [↑](#footnote-ref-5)
6. . Equinet (2019), 'Equality Bodies Countering Ethnic Profiling: Focus on Law Enforcement Authorities in Europe'. [↑](#footnote-ref-6)
7. . 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 [↑](#footnote-ref-7)
8. . 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 [↑](#footnote-ref-8)
9. . CERD/C/GBR/CO/21-23, paragraph 18 [↑](#footnote-ref-9)
10. . CERD/C/DEU/CO/19-22, paragraph 11 [↑](#footnote-ref-10)
11. . CERD/C/GBR/CO/21-23, paragraph 18-19 [↑](#footnote-ref-11)
12. . CERD General recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, paragraph 4 (b) [↑](#footnote-ref-12)
13. . See the report of the Special Rapporteur on minority issues on minorities and the criminal justice process, (2015) A/70/212, paragraph 24 [↑](#footnote-ref-13)
14. . CERD/C/CAN/CO/21-23, paragraph 16 (c). CERD/C/KGZ/CO/8-10, paragraph 28. CERD/C/MUS/CO/20-23, paragraph 21 [↑](#footnote-ref-14)
15. . CERD/C/DEU/CO/19-22, paragraph 11 (c) [↑](#footnote-ref-15)
16. Equinet (2019), 'Equality Bodies Countering Ethnic Profiling: Focus on Law Enforcement Authorities in Europe'. [↑](#footnote-ref-16)
17. . CERD/C/DEU/CO/19-22, paragraph 11 (e) [↑](#footnote-ref-17)
18. . CERD/C/DEU/CO/19-22, paragraph 11 (c) [↑](#footnote-ref-18)
19. Equinet (2019), 'Equality Bodies Countering Ethnic Profiling: Focus on Law Enforcement Authorities in Europe'. [↑](#footnote-ref-19)
20. . CERD General recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, paragraph 13 [↑](#footnote-ref-20)
21. . CERD/C/BLR/CO/20-23, paragraph 24. (a). CERD/C/KGZ/CO/8-10, paragraph 18.(c) [↑](#footnote-ref-21)
22. . CERD/C/DEU/CO/19-22, paragraph 11. (f). CERD/C/JPN/CO/10-11, paragraph 24 [↑](#footnote-ref-22)
23. . CERD/C/CAN/CO/21-23, paragraph 16. (a). CERD/C/GBR/CO/21-23, paragraph 27 [↑](#footnote-ref-23)
24. . Ibid, paragraph 17.(d) [↑](#footnote-ref-24)
25. . 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 [↑](#footnote-ref-25)