**Observations of the Group of Independent Eminent Experts on**

**the Implementation of the Durban Declaration and Programme of Action**

The Group of Independent Eminent Experts on the Implementation of the Durban Declaration and Programme of Action (IEEs) congratulates the members of the Committee on the Elimination of Racial Discrimination (CERD) for their timely efforts to address the comprehensive phenomenon of racial profiling by law enforcement officials. In this regard, the group of IEEs has the honour to submit several suggestions for CERD’s consideration.

The group welcomes the consideration of the Durban Declaration and Programme of Action, as referred to in paragraph 6 of the Draft Recommendation, and points out that this has been the first United Nations document to refer to the concept of racial profiling: *urges States to design, implement and enforce effective measures to eliminate the phenomenon popularly known as “racial profiling”, and comprising the practice of police and other law enforcement officers relying, to any degree, on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity* (paragraph 72 of the Durban Plan of Action)

1. Paragraph 14: it could be useful to recall that ICERD’s preamble emphasizes that “all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination”; to point out that article 5 of ICERD is the most important article for combatting racial profiling by law enforcement officers;
2. Paragraph 16: it is suggested to revise the definition of racial profiling and include the key notion of “objective and reasonable justification”. The group of IEEs invites CERD to take into consideration paragraph 72 of the Durban Plan of Action, as well as the definition of ECRI, from General Policy Recommendation No.11.
3. Paragraph 17: to include the language of CERD’s GR No. 32: “The “grounds” of discrimination are extended in practice by the notion of “intersectionality” whereby the Committee addresses situations of double or multiple discrimination - such as discrimination on grounds of gender or religion – when discrimination on such a ground appears to exist in combination with a ground or grounds listed in article 1 of the Convention.” It is suggested to highlight explicitly the negative impact of racial profiling on women and religious minorities.
4. Section on defining and understanding racial profiling
   1. It would be useful to point out clearly that racial profiling is discriminatory, unlawful and constitutes a human rights violation; it is also ineffective and perpetuates stereotypes.
   2. It might be useful to add a new paragraph on the issue of biases. It could be stated that racial profiling is a form of bias-based profiling. Biases could be individual, conscious or unconscious, as well as institutional. For the individual level: a lot of law enforcement agencies started conducting trainings on biases, attempting to increase self-awareness. For the institutional level: it is important to conduct bias-auditing of internal policies, including standard operating procedures and codes of conduct. It would be important to point out that when there is wide discretion for law enforcement acts—there are higher risks for biases.
   3. It could be useful to take into consideration paragraph 25 of ECRI’s General Policy recommendation No. 11 which points out that racism and racial discrimination, including racial profiling, cannot constitute a possible response to security challenges. Firstly, because they violate human rights. Secondly, because they reinforce prejudice and stereotypes about certain minority groups and legitimise racism and racial discrimination against them among the general population. Thirdly, because racial profiling is not effective and is conducive to less, not more human security.
   4. Racial profiling could be also manifested in algorithmic decision-making methods and processes used by law enforcement officials for the purpose of predictive policing and leading to what is known as algorithmic profiling. In this case, there could be two sources of biases: the ones of the IT professionals who develop the law enforcement software and databases, and the ones of the law enforcement officers who analyse the results of the algorithmic methods.
5. Section on consequences of racial profiling: individual biases of law enforcement officers could pose risks for their own safety. There were incidents when law enforcement officers were wounded because they wrongly assumed the sex and ethnicity of the perpetrator. Racial profiling could have a negative impact also on public safety: increasing number of incidents could lead to social unrest and riots. It could also have financial implications for law enforcement agencies, based on victims’ claims for financial compensations: this has been the case in various countries. Racial profiling could affect negatively also community policing: less willingness to cooperate with law enforcement officers would affect information provided by civilians, which is of vital importance for intelligence purposes.
6. Section on racial biases associated with artificial intelligence: it is suggested that the section focuses on what is known as algorithmic profiling. With regard to facial recognition software, it should be noted that it might enhance negative stereotypes and have a negative impact also on human rights defenders: easily detected and arrested.
7. Section on recommendations: it would be useful to point out that the recommendations are primarily addressed to law enforcement agencies.
   1. Legislative measures: it is suggested to shift the focus to internal policies of law enforcement agencies, including standard operating procedures and codes of conduct, as in many countries there are good anti-discrimination laws, but they might not be properly implemented/applied by some law enforcement officers. Internal policies must include clear definition of racial profiling, clear prohibition of racial profiling and disciplinary measures in cases of misconduct.
   2. It is suggested to include a recommendation specifically addressed to law enforcement agencies/officers: define and prohibit racial profiling, conduct bias-auditing of internal policies; reduce discretion and provide clear guidance to officers; put in place effective monitoring mechanisms: internal and external (with the participation of NGOs and civilians); ensure that performance indicators for law enforcement officers are not linked to stop and search, moto vehicle searches and checks of ID documents.
   3. Human rights education and training: it would be important to highlight the need for a systematic approach to trainings. The impact of capacity building initiatives would be limited if there are internal policies that promote biases and if there is no commitment from senior officers to combat bias-based policing. Trainings for combatting biases should be mandatory for law enforcement officers. It should be noted that sometimes examples in law enforcement trainings focus disproportionately on vulnerable groups, which enhance biases and increase the chances for misconduct.
   4. It is suggested to re-name section D to “Community Policing”. The law enforcement agencies should be encouraged to establish external monitoring mechanisms with the participation of NGOs and civilians. The importance of full and effective participation of all groups, including minorities, should be highlighted.
   5. Disaggregated data: it would be important to include all grounds listed in article 1 of ICERD, as well as grounds for intersecting forms of discrimination such as religion and gender. Senior officers should monitor and analyse anonymised disaggregated data. It is important to point out that data should be collected, stored and used, in accordance with human rights standards and principles.
   6. Accountability: prompt disciplinary measures should be applied in cases of misconduct.
   7. Artificial intelligence: it is suggested to rename it to “Algorithmic Profiling”. In para. 37, the focus should not be limited to “police oversight bodies”; the role of external, independent mechanisms could be also highlighted. In para 39, it is suggested to replace report “cases of racial discrimination associated with artificial intelligence” with “cases of algorithmic profiling based on race, colour, descent, national and ethnic origin, as well as their intersecting forms with other grounds including gender and religion”. It would be important to have mechanisms in place that would monitor and assess regularly AI tools, including predictive policing tools, and processes, used in the domain of law enforcement, to prevent any discriminatory effects.

The group notes that although racial profiling may have a greater impact when practiced by law enforcement officials, including in public areas, migration services, airports, etc. it is not limited to them. In some regions/countries it is widely practiced in public commercial areas (malls), especially dedicated to consumption and leisure of people of higher economic power, where private security adopt aggressive methods of surveillance, keeping the area free from people considered inadequate.

The degree of vulnerability of people of African Descent in some areas of developing countries as regards the police forces is such that there is a perception that the concept of public security does not include this segment of the population, that is considered a menace and whom also fear the police forces. Human rights organizations propose to strengthen the external control of the police and the protection of the organizations.