Working Group of Experts on People of African Descent response to CERD Draft General Comment 36

The Working Group f Experts on People of African Descent welcomes and commends this important General Comment by the CERD Committee and respectfully submits these comments in support of the document:

In Section VI on artificial intelligence, it may be worth noting that some areas have managed to use artificial intelligence to investigate and examine racial profiling and selective enforcement of the law, and to diminish the incidence of racial bias. For example, in Oakland, CA in the United States, researchers assisted the police in determining that people of African descent stopped by the police were experiencing statistically significantly less respect than white motorists stopped by the police using an algorithm that analyzed communications between police officers and people stopped using the audio footage of body-worn cameras and developed quantitative evidence of racial disparity. *See* Rob Voigt, Jennifer Eberhardt, et al., *Language from police body camera footage shows racial disparities in officer respect,* PNAS (Mar. 26, 2017) (available here: [www.pnas.org/cgi/doi/10.1073/pnas.1702413114](http://www.pnas.org/cgi/doi/10.1073/pnas.1702413114)).

Similarly, in Section G (recommendation), the Working Group respectfully suggests that the CERD Committee might highlight the opportunity and obligation of States to deploy emerging technologies, like artificial intelligence and machine learning, to actively uncover and fight racial bias. This is a marked alternative to the current practice of using science tools to argue that racial disparity is benign or justified. As referenced above, one example of this is the recent study by Dr. Jennifer Eberhardt, referenced as the first comment in this document. *See* Rob Voigt, Jennifer Eberhardt, et al., *Language from police body camera footage shows racial disparities in officer respect,* PNAS (Mar. 26, 2017) (available here: [www.pnas.org/cgi/doi/10.1073/pnas.1702413114](http://www.pnas.org/cgi/doi/10.1073/pnas.1702413114)). In this study, the researchers applied a machine learning algorithm (artificial intelligence) to transcripts of the language captured in body worn camera footage by police conducting traffic stops and determined that police officers speak significantly less respectfully to people of African descent than to white people in traffic stops in one city in the United States. This offers concrete evidence of racial disparity as well as clear indicators for how to improve and “equalize” treatment across races.

At Paragraph 23, where discussing the discriminatory potential inherent in artificial intelligence and machine learning instruments that reflect and reproduce racial biases and disparities as they draw on information that encodes these biases, the Working Group respectfully suggests the CERD Committee reference the dangers to life and liberty inherent in the ***current*** commercial sale and active use of artificial intelligence and machine learning systems in law enforcement, surveillance, and weapons systems, including the risk that the error rates in these instruments that disproportionately impact non-white persons, and particularly people of African descent, will result in “false positives” and misidentifications in assessing factors relating to risk, criminality, or likelihood of danger. One reference for the way this error plays out against individuals of African descent with no criminal history is found in a recent test of a commercial product against all U.S. Congresspeople of African descent. *See* Tony Roman, *Amazon’s Facial recognition tool misidentified 28 lawmakers as people arrested for a crime,* The Washington Post (July 26, 2018). The facial recognition tools are commodified and sold as commercial products to governments despite considerable race-based error in their functioning and the attendant dangers.

At Paragraph 24, The Working Group suggests rephrasing the concern currently drafted as “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,“ in the following way: “***States are resorting to the use of algorithms, in order to foresee the possibilities that an individual falls within a category of people statistically more likely to commit one or several crimes in the future***. “ in order to highlight that the bad decision-making in this framing is the false equivalent between causation and correlation, as judges mistake risk pools in which individuals are grouped based on predictive categories of individual behavior

At Paragraph 27, the Working Group suggests the addition of a requirement that, where apparent or documented racial disparities exist in the criminal justice system, States should bear the affirmative responsibility of investigating and ensuring actions to uncover and mitigate unlawful racial profiling, selective enforcement of the law, and other discriminatory practices are in place.

At Paragraph 31, the Working Group would favor adding a sentence before, “this data should not be misused,” namely: ***States should recognize that the lack of disaggregated data often conceals patterns in racial profiling, racial discrimination, and violations of human rights made on the basis of race or disparately impacting people on the basis of their race***

After Paragraph 31, the Working Group would suggest an additional paragraph on how to understand, recognize, and use racial disparities. Once disaggregated data exists, the existence of racial disparities provides important data on where to look to find practices, policies, or procedures that have the intent of racial bias or the impact of disparate treatment, including the selective enforcement of the law. While racial disparities may be benign, the presumption is that they are not, particularly where disparities arise or become concentrated at key decision points (like between primary and secondary education or between education and employment, or between use of narcotics and prosecution for narcotics) with respect to race. Each racial disparity offers a quantitative clue that qualitative factors may be perpetuating racial bias consciously or unconsciously and with or without knowledge of the perpetrators. An authentic commitment to ensure racial equality requires affirmative investigation of racial disparity as an important indicator of unequal access to opportunity. One Member State currently engaged in this process, that could be referenced in this regard, is Great Britain, which recently conducted a Race Audit (available online) and continues to use racial disparities to drive questions about the practices, procedures, and policies that might drive and perpetuate disparities in outcomes for particular groups on the basis of their race.

At Paragraph 32, the Working Group suggests a final sentence: There is a growing body of literature to support this type of intervention. A footnote might cite the report by Dr. Jennifer Eberhardt, ***Strategies for Change: Research Initiatives and Recommendations To Improve Police-Community Relations in Oakland, Calif.,*** found [here](https://sparq.stanford.edu/opd-reports), sets forth various interventions including Racial Impact Reports conducted by police leadership and ongoing discussions of racial profiling conducted by the Risk Management leadership within the police department.

At Paragraph 36, ongoing evaluation and assessment, as the racial biases and disparities in new and emerging technology often become apparent only after some time or as researchers with a particular interest in assessing bias begin looking at publicly released products. These technologies should be subject to ongoing and particularly careful review as they may perpetuate bias in ways that are difficult to discover or understand in the forums where they are used (e.g., the courts and justice systems) or upon initial enactment of these new systems. Like legislation, how a these artificial intelligence tools work in practice is as important, and as revealing, as their design.