

FORUM ON MINORITY ISSUES EIGHTH SESSION

"Minorities in the criminal justice system"

**24 and 25 November 2015
Room XX, Palais des Nations, Geneva**

SUMMARY BY THE CHAIRPERSON OF THE FORUM

Mr Joshua Castellino

Pursuant to Human Rights Council resolution 19/23 of 23 March 2012, the Forum on Minority Issues continues to provide a platform for promoting dialogue and cooperation on issues pertaining to national or ethnic, religious and linguistic minorities, as well as providing thematic contributions and expertise to the work of the Special Rapporteur on minority issues, Ms Rita Izsák-Ndiaye. The Forum identifies and analyzes best practices, challenges, opportunities and initiatives for the further implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (hereinafter referred to as "the Declaration").

The Forum meets annually for two working days allocated to thematic discussions. The Special Rapporteur on minority issues is responsible for guiding the work of the Forum, preparing its annual meetings and reporting on its thematic recommendations to the Human Rights Council.

The eighth session of the Forum took place on 24 and 25 November 2015 in Room XX of the Palais des Nations in Geneva, Switzerland. Mr Joshua Castellino was appointed as Chair of the session, which focussed on "**Minorities in the criminal justice system**".

Over 500 participants took part in this eighth session of the Forum, including United Nations Member States and specialized agencies, intergovernmental and regional organizations, human rights treaty bodies, national human rights institutions, academics and experts, as well as civil society actors working on minority issues¹. In addition to this wide range of stakeholders, this session brought together persons belonging to national, ethnic, linguistic and religious minorities who are actively engaged in minority rights advocacy and diverse areas of work related to the protection and promotion of the rights of minorities, as well as experts in the field of criminal justice.

The report of the Special Rapporteur to the 70th session of the General Assembly, dedicated to the situation of minorities in the criminal justice process (A/70/212), as well as a detailed programme of work and a set of draft recommendations were made available

¹ The list of the organizations and delegations that participated in the Forum is available on the website of the Forum on Minority Issues: <http://www.ohchr.org/EN/HRBodies/HRC/Minority/Pages/Session8.aspx>

to all Forum participants in advance of the Forum, and formed the basis for the discussion².

Format of the Forum

The Forum followed the procedure developed over its previous sessions. To help focus the discussions, ensure they would be highly interactive, and focussed on agreeing concrete recommendations, each agenda item was introduced by several pre-selected presentations, followed by interventions from other participants, based on a sign-up sheet. This year, the panellists were given the opportunity to answer or comment on the participants' questions and interventions, and to relate these to the recommendations.

Outcome documents

The present document is prepared in accordance with Human Rights Council resolution 19/23, which requests the Chair to prepare "a summary of the discussion of the Forum, to be made available to all participants of the Forum". This summary is to be complemented by the outcome document containing the recommendations of the Forum that will be presented by the Special Rapporteur on minority issues to the Human Rights Council at its 31st regular session in March 2016.

This summary does not provide the full details of all presentations that were made during the Forum's proceedings. The consolidated list of speakers and, where available, the full text of their presentations can be found on the website of the Forum at the following address: <http://www.ohchr.org/EN/HRBodies/HRC/Minority/Pages/Session8.aspx>

Item I. Opening meeting

The President of the Human Rights Council, H.E. Ambassador Mr Joachim R cker, welcomed all participants. He recognized the notable achievements realized for the promotion and protection of the rights of minorities during the past two decades, while acknowledging that some challenges remained, including in the field of criminal justice. He noted that discrimination against minorities, though prohibited by law in many countries, continues to occur in practice. He commended the work of the Human Rights Council, and in particular the Special Procedure mandate-holders and the Universal Periodic Review, for addressing minority issues in their work. He welcomed this year's session of the Forum as a way to identify practical means for ensuring inclusive, harmonious, multi-ethnic and multi-faith societies in which all may live in equality before the law.

The Deputy High Commissioner for Human Rights, Ms Flavia Pansieri, welcomed all participants on behalf of the High Commissioner for Human Rights. She acknowledged the evidence of disturbing patterns of violations of the rights of minorities in the criminal justice process and in particular, the issue of institutionalised discrimination against specific groups. She highlighted efforts by the OHCHR to combat

² See A/HRC/FMI/2015/1 and A/HRC/FMI/2015/2 available on the Forum's website.

and prevent discriminatory law and practices in the criminal justice system, including through the provision of practical recommendations to States and other relevant stakeholders, consultations on specific topics such as community policing, and the support of various funds which help fight against impunity with a strong victim-centered approach.

The Special Rapporteur on minority issues, Ms Rita Izsák-Ndiaye, stressed the importance of addressing the issues currently faced by minorities in the criminal justice process, as reflected in the decision to devote both this year's session of the Forum on Minorities and her annual report to the UN General Assembly on this topic. She reminded the forum that international law prohibits discrimination in the administration of justice and creates positive obligations to ensure that justice systems are sensitive to, and facilitate effective participation of, minorities. She highlighted a few of the issues encountered during her mandate, including: racial profiling during police procedures, excessive use of force, patterns of overrepresentation of minorities in pre-trial detention, inadequate legal representation and insufficient access to legal aid. She drew attention to the underrepresentation of minorities in law enforcement agencies, judiciaries, prosecution services and legal professions around the world, emphasizing the impact of multiple and intersecting forms of discrimination faced by minority women. She invited all participants to play an active role in contributing to the discussion on the draft set of recommendations.

The Chair of the eighth session of the Forum on Minority Issues, Mr Joshua Castellino, reflected on the need for robust and fair criminal justice systems throughout the world in this time of heightened terrorist threat. He remarked that poorly designed criminal justice systems sometimes institutionalize social exclusion, heighten fear and suspicion, and generate schisms within society. He wished for the Forum to generate recommendations on how such systems could be reformed to better serve the interests of creating ordered, more inclusive and fairer societies that are representative of the diverse populations within them.

Item II. Legal framework and key concepts

This session provided an overview of existing international and regional standards and principles relevant to the fairness and effective safeguarding of minority rights at all stages of the criminal justice process. It also covered the role of international, regional and national mechanisms in guaranteeing a strong national legal framework for the protection of minorities and in ensuring institutional attention is given to issues relating to minorities.

The President of the Inter-American Commission on Human Rights (IACHR), Ms Rose-Marie Belle Antoine, stated that despite the principles of equality and non-discrimination being entrenched in all legal systems in the Americas, de facto inequalities remained common practice, grounded in historical realities. The Inter American Commission on Human Rights has gathered evidence of discrimination from a number of sources and concludes that racial discrimination in the criminal justice system and in

policing reflects wider societal problems. The existing legal frameworks provide only a superficial protection against discrimination. It is important to look at the way laws are interpreted, the types of laws or penalties chosen for implementation, which offenses attract criminal penalties and which do not. She emphasized how law applied unequally unfairly impact minorities. Using the example of racial profiling and statistics on excessive use of force against minorities, she warned against broad application of anti-terrorism laws, which have disproportionately impacted minorities. She expressed concern that the principle of proportionality and the preservation of the right to life were typically ignored in policing. She called attention to disenfranchisement, loss of livelihoods and loss of voting rights which often followed convictions, with devastating consequence on minority communities.

Mr Régis de Gouttes, Premier Avocat Général honoraire à la Cour de Cassation (France) and former member of the UN Committee on the Elimination of Racial Discrimination (CERD), presented CERD General Recommendation 31 adopted in 2005, which provides guidance on the prevention of racial discrimination in the administration of criminal justice. He noted that the scope of this recommendation was not solely limited to racial discrimination but should be extended to all forms of discrimination that arise in the criminal justice system. General Recommendation 31 presents steps to be taken to better gauge the existence and extent of racial discrimination in the administration and functioning of the criminal justice system, notably through the use of factual and legislative indicators and accompanying strategies. The Recommendation identifies steps to be taken to prevent racial discrimination with regard to victims of racism who seek justice, and to prevent racial discrimination with regard to accused persons who are subject to judicial proceedings.

Ms Gay McDougall, Member-elect of the Committee on the Elimination of Racial Discrimination and former Independent Expert on minority issues, presented the fundamental right to non-discrimination and equal treatment as a peremptory norm of the highest order in the international human rights legal architecture. She highlighted CERD's work to acknowledge, monitor and seek redress for situations of racial inequality. She regretted that in some deeply divided multi-racial societies, the system meant to administer justice is being instead used to address the fall-out when national policies fail to fully integrate all sectors of the populations into the full economic, education and social benefits of the nation. She gave the example of the failure of education systems, social support and national economies, which have relied on prisons to compensate for failures in other sectors. She encouraged the Forum to discuss safeguards and approaches to prevent scenarios of violence and imprisonment.

Mr Asbjørn Eide, Senior Fellow of the Norwegian Center for Human Rights and former Chairman of the UN Working Group on Minorities, welcomed the focus of discussion for this year's Forum on Minority Issues. He stressed the dual requirement of the rule of law: equal protection against harms by others, and equal respect of rights when subject to law enforcement. It is essential that both the law itself and its enforcement are seen as legitimate by all sections of society. He welcomed the comprehensive overview of the existing legal framework included in the report of the Special Rapporteur on

minority issues to the UN General Assembly, and recalled the principal provisions of key relevant international law instruments such as the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

Henrik Villadsen, Director of the Office of the High Commissioner on National Minorities, OSCE, delivered a presentation on the use of quiet diplomacy and confidentiality to ease tensions and resolve conflicts in multi-ethnic societies. In 2006, his office published a set of recommendations on policing in multi-ethnic societies. He drew attention to the role of the Police, who could be both a contributor and a threat (via heavy-handed operations) to stability in States with a plurality of groups. The OSCE recommendations provide guidance for policy makers on how best to approach policing in multi-ethnic societies.

Discussion

The following issues were raised during the discussion under Item II:

- the situation of children from minority communities deprived of their liberty in the criminal justice system;
- how the international community could support States in ensuring that all procedural rights are respected and fulfilled for persons belonging to minorities in the criminal justice system;
- examples of national practices to increase access both to formal justice institutions and to less formal dispute resolution mechanisms;
- the challenges faced by some religious and other minorities in registering and seeing the effective pursuit of criminal complaints brought against the authorities.

Item III. Minorities and the use of Police powers

The session discussed the key factors that create and perpetuate vulnerability of minority groups and their exposure to the arbitrary or discriminatory exercise of police powers, including structural discrimination. The session considered effective measures to prevent the excessive use of force, including lethal force, by police, and how best to ensure full compliance with the requirements of proportionality and strict necessity in any use of force against persons belonging to racial or ethnic minorities. It also strived to identify effective positive measures that foster or strengthen trust in law enforcement personnel and prevent or address failures (actual and perceived) of law enforcement in protecting minorities from violence against them.

Mr György Makula, Deputy Head of the Communication Service of National Police Headquarters, Hungary, and Chairman of Fraternal Association of European Roma Law Enforcement Officers, presented the good practice of including representatives of minority communities in the police forces. Drawing on his experience as a Roma police officer in Hungary, he suggested this as a particularly effective way of overcoming situations where prejudiced beliefs are widely held within a majority population. He highlighted how deploying Roma patrols to respond to

crimes has been beneficial in changing attitudes among the majority population, and sending a strong message of inclusion to the Roma population. He encouraged the development of similar initiatives in Europe and elsewhere.

Ms Jennifer Robinson, Director of legal advocacy at Bertha Foundation, presented her work as a lawyer defending the rights of West Papuans in Indonesia, as part of the Bertha Justice Initiative which conducts litigation and advocacy on behalf of minorities around the world. She highlighted the difficult situations faced by the West Papuans in the criminal justice system. She stressed the importance of States allowing international organizations to access regions where they can support local civil society to document cases and collect data, and suggested that the draft recommendations could be expanded in this regard. She called for a clear recommendation to international and regional organizations to supervise general compliance with the recommendations discussed during the Forum.

Ms Nimalka Fernando, President of the International Movement Against All Forms of Discrimination and Racism (IMADR), warned against the rise of xenophobia following terror attacks in the past two decades, which have a direct impact on the treatment of minority communities. From her personal experience of the 30-year long conflict in Sri Lanka, she highlighted how communities of Tamil origin have been disproportionately targeted by unlawful arrests and violence committed by the police and the armed forces. This situation led Ms Fernando to become a lawyer to provide legal advice for those affected by such abuse. She warned against the discriminatory application and misuse of the Prevention of Terrorism Act, which grants the police broad discretionary powers and opens the gateway to systematic abuse of human rights, including, arrest and detention without charge for up to 18 months, disappearances, torture and extrajudicial or otherwise arbitrary killings. She highlighted the plight of Muslim communities facing violence and discrimination as a religious minority group.

Mr John Lamberth, President of Lamberth Consulting, has been assessing whether racial profiling is occurring, and working with community groups, in selected cities in the United States. He stressed that it is crucial for police agencies to keep record of all occasions where they stop individuals for questioning, searches, or other purposes, including those which do not result in citation or other formal action by the police, in order to determine whether a stop was made in a discriminatory manner. Data should, he said, include details on the race/ethnicity of the person stopped, the date and time, exact location, reason for the stop and any action taken by the police on the basis of the stop. The data collected must then be compared to a benchmark reflecting the proportion of people of minority status typically present at that location. After analysis, the data should aim at correcting any erroneous perception by the police or by minority communities and encourage them to work together to provide a safer, more secure and amicable society in which to live.

Discussion

During the discussion under item III, the following issues were raised:

- the failure of some criminal justice systems to protect certain minorities and the excessive or otherwise arbitrary use of force against minorities;
- the problem of arbitrary arrests and detention disproportionately affecting certain linguistic and ethnic minorities, creating a paradox of the protector becoming the oppressor;
- the desire of some linguistic and cultural minorities, particularly where concentrated in specific regions, to see court proceedings conducted in their language;
- the worrying trend towards discriminatory surveillance practices targeted against or disproportionately affecting certain religious groups, and other discriminatory enforcement of laws in relation to specific groups or areas;
- lack of accountability of police forces for their acts, which may reinforce a climate of violence, discrimination and impunity;
- inaction by the police when persons belonging to minorities need their services, and the phenomenon of blaming victims for attacks they have suffered.

Item IV. Challenges of criminal justice systems in addressing the needs and demands of minorities

The session considered the specific challenges that minorities face in criminal judicial proceedings, including obstacles to realizing their rights to equality before the law, to non-discrimination and to fair trial. The session analysed experiences of minorities as witnesses, victims and/or offenders at all stages of criminal proceedings, including through the identification of discriminatory application of sentencing regimes, including the use of the death penalty, and disparities in sentencing that may arise from intentional prejudice or indirect discrimination. The session shared accounts of violence and abuse (or exposure thereto) suffered by minorities in the context of detention and other forms of deprivation of liberty, and identified necessary steps to prevent and address such acts. The session discussed measures for guaranteeing an independent, impartial and representative judiciary and for identifying strategies and practices to remove actual or potential obstacles preventing minority victims from reporting a crime, to create an enabling environment for minorities to have access to formal justice.

Mr André Salvador Bezerra, Judge and President of Associação dos Juízes para a Democracia in Brazil, noted that in spite of a protective legal framework, minorities in Brazil continue to suffer from what he described as racial domination. He pointed out the disproportionately high incarceration rate and high police violence against Brazilians of African descent. He also remarked on appalling prison conditions that allowed for torture and sexual violence against women. Mr Bezerra recommended the use of recruitment quotas to improve the representation of minorities in the judicial system, and called for better access of minorities to free legal aid. He also called for the democratization and the independence of the judiciary to prevent abuse of power. He also drew attention to the importance of including a human rights component in the curriculum of law schools. He shared examples of good practice for judges to exercise their powers in ways that promote social rehabilitation.

Ms Taghreed Jaber, Regional Director, Middle East & North Africa Office of Penal Reform International, stressed the importance of first contact with the police as it tended to reflect or affect the experience of minorities throughout the whole justice process. She emphasised the need to counter the culture of impunity by establishing mechanisms to ensure accountability for actions of police officers. She remarked on the situation of overcrowding that she said characterizes the majority of prisons in the Middle East and North Africa, with its disproportionate impact on vulnerable groups and minorities. She highlighted that a large proportion of persons deprived of liberty remain in pre-trial detention. She noted that detention is often used in a punitive manner, rather than for the goal of rehabilitation, and highlighted the importance of the Bangkok Rules for women in detention.

Mr. András László Pap, Professor of Law, Hungarian Academy of Sciences, and former Rapporteur for the European Parliament on ethnicity- and race-based profiling in counter-terrorism law enforcement and border control, highlighted the challenges raised by collecting data on race or ethnicity when there is no clear definition or classification of minority communities or what constitutes membership within the groups. The options used to define membership, for example reliance on self-declaration by the persons concerned, or based on the perception of the police officer or other outsiders, often from the majority, or even by applying objective criteria, such as name, language, skin color, clothing, or place of birth, are not ideal. He pointed out that discrimination in criminal justice systems can occur both in over- and under-policing of minorities.

Ms Durga Sob, Feminist Dalit Organization, shared her observations concerning the challenges of Dalits and Dalit women in the Nepalese criminal justice system. She regretted that the investigation and prosecution system were not sensitive to the poor or to Dalits. As a consequence she highlighted that Dalits do not feel that the system is oriented toward the protection of their rights. In this respect, while caste-based discrimination has been criminalized by law, it remains rare that victims of such discrimination obtain justice. She recommended legislative reform of the criminal justice system in Nepal, the standardization and modernization of investigation policies and methods, and called for a holistic legal aid system be put in place.

Ms Salimata Lam, Programme Coordinator at SOS-Esclave, Mauritania, shared observations regarding the situation of victims of slavery and descendants of slaves and of national minorities. She highlighted the difficulties of certain linguistic minorities in navigating the Mauritanian criminal justice system, which predominantly uses Arabic without systematic resort to interpretation services. Courts are centralized, which prevents communities living in the margin from having adequate access to justice. Ms Lam welcomed the draft recommendations related to legal aid as important in improving access to justice for minorities. She also particularly welcomed recommendations related to the training of judges, other judicial actors, and supported the call for access to an interpreter during criminal proceedings.

Discussion

During the discussion under item IV, the following points were raised by the participants:

- the lack of available data reflecting the number of acts of police violence perpetrated against members of minority communities in certain countries;
- the challenge of conducting investigations and ensuring accountability for violations against minorities in the context of an ethnic conflict;
- the language barrier, which sometimes prevents certain minorities from effectively using courts;
- the long term intergenerational impact generated by the disproportionate prosecution and detention of members of minorities, and the particular importance for judicial authorities to uphold the best interests of the child in their decisions;
- the need for implementation of existing protection frameworks for minorities, and the importance of using a human rights-based approach to ensure effective participation of minorities in all aspects of the criminal justice system;
- the particular attention needed to tackle intersectional discrimination faced by minority women in situation of detention;
- examples of good national practice in relation to culturally sensitive correctional measures.

Item V. Addressing the root causes of discrimination in the administration of justice

The session identified actual and potential barriers to countering discrimination against minorities in the criminal justice system, including effective strategies to address obstacles preventing the collection and analysis of comprehensive and disaggregated data at each stage of the criminal process. The session identified measures to remove actual or potential obstacles for minorities joining relevant professions including the police, the judiciary, prosecution services, the legal profession and prison personnel, and shared positive examples of systems in place to guarantee independent oversight and accountability mechanisms for upholding the independence and integrity of the police and the judiciary. The session discussed concrete examples of how to ensure that relevant training initiatives are designed and implemented with the meaningful participation of and in consultation with minority groups.

M. Mutuma Ruteree, UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, raised the importance of addressing root causes of discrimination in order to improve efforts to eliminate discrimination in law enforcement and criminal justice processes. Mr Ruteree devoted his more recent report to the General Assembly to the issue of stop and search practices, which have disproportionately targeted minority populations. He warned against the use of new technologies that purport to create automatically generated “risk profiles” for specific ethnic groups, which he argued could become a regularized and permanent fixture of immigration and border control management systems around the world. The legal framework to prevent discrimination needed to be comprehensive, with adequate data concerning stopped individuals collected on the basis of self-identification and

consent by such individuals. He drew attention to his latest report to the General Assembly as including further information about data collection methodologies.

Ms Louise Finer, Senior Policy Officer and National Preventive Mechanism Coordinator, Her Majesty's Inspectorate of Prisons for England and Wales, highlighted some key principles for the monitoring of prison conditions and treatment of prisoners, and reminded participants of the important role such mechanisms play in strengthening protection of the rights of minorities. She referred to the Optional Protocol to the Convention against Torture to highlight the importance of regular independent monitoring to prevent ill-treatment of detainees. She identified some areas of work by HM Inspectorate which are relevant to the protection of minorities' rights: the actual inspection work seeks to ensure prisoners are held safely and treated with respect for their human dignity and do not experience discrimination on any ground. HMI carries out thematic research and formulates recommendations, and has devoted studies to specific issues such as Muslim prisoners or prisoners identifying as Gypsy, Romani or Traveller. Finally, she stressed how HMI strives to be representative of ethnic and minority groups present in their areas of operation, and its work to strengthen the diversity of the workforce.

Mr Francis Kpatindé, Journalist and Maître de Conférences at l'Institut d'Etudes Politiques in Paris, pointed out the crucial role of the media to enable fairer access to justice for minorities, by giving them a voice and ensuring their situation is widely known. He regretted that some media might not always know and understand certain minorities and their culture, and who would as a consequence, convey a prejudiced image to the rest of their society. He recommended that journalists be better trained to cover issues related to minorities in a professional manner, and encouraged minority communities to create their own media outlets.

Mr Kadayam S. Subramanian, Journalist, Former Director General of Police for Tripura State, India, discussed the issue of police brutality affecting minorities in India, and the lack of accountability of police forces that perpetrate abuses. He recalled the Commonwealth Human Rights Initiative (CHRI) call for police reforms in South Asia to put an end to repressive structures within the criminal justice system inherited from the colonial regime. He highlighted that such reforms were necessary to achieve democratic reform of the administration and create an independent and effective police force. He stressed the importance for Police officers at all levels, to be sensitized to human rights.

Discussion

During the discussion under item V, the following points were raised by the participants:

- the importance of effective national strategies to combat the root causes of discrimination within a country;
- the importance of addressing recommendations not only to States but to Non-State actors;
- the relevance of the rights of persons belonging to minorities in the fight against terrorism;

- the issue of lack of awareness of certain minority communities of their rights.

Ms Rita Izsák-Ndiaye, the United Nations Special Rapporteur on Minority Issues, provided some concluding remarks, noting the prejudice and racism that are often the underlying root causes that prevent criminal justice systems from effectively guaranteeing the rights of minorities. Much needs to be done to improve policies and regulations, to reach out to minorities with scholarships and affirmative action programs to ultimately increase their representativeness in the criminal justice agencies, to collect disaggregated data and study patterns of discrimination, and to encourage an objective portrayal of minorities in the media. The Special Rapporteur highlighted the importance of education from an early age about tolerance and respect between communities, to create societies with a culture of listening and talking to each other, and ensuring that fear does not distort our vision and leave us trapped in simplified narratives and generalizations. It is vital to rebuild everyone's trust and faith in each other and in institutions.

Mr Joshua Castellino, Chairperson of the eighth session of the Forum on Minority Issues, concluded the session. He acknowledged the many voices that have expressed the challenges they face within the criminal justice system, often deploring how forces of law have failed to protect their dignity and their worth, and have indeed sometimes been complicit in the root causes of the suffering of such communities. He welcomed the contribution of experts and noted the importance of implementation of existing standards around the world. He also noted the voice of Member States, which have offered insights from their practice, and their support for more robust and inclusive criminal justice systems. He hoped the Forum would generate positive outcomes, starting with acceptance by stakeholders and society of the need for change that includes all segments of a State's population. He also suggested that collaborative solutions to achieve this change might be more likely to work than isolated ones.