

Forum: Legal Committee (GA6)

Issue: Establishing rules and regulations against discriminatory imprisonment and racial profiling

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INTRODUCTION

You have almost certainly witnessed at least one incident in your life in which a person of colour was stopped by a police officer because they were suspected of committing a crime in the area. Such incidents raise the question of why a person of African descent should be automatically labelled a criminal, even though their behaviour bears no resemblance to that of any other person. Shouldn't this discriminatory treatment, which is referred to as "police profiling," be considered unfair and prejudiced?

So, racial profiling refers to the discriminatory practice of law enforcement officials, who determine based on their racial or ethnic characteristics whether they will run a routine police practice, including stop-and-search, investigation, and questioning or not. They are strongly influenced by the generalizations and stereotypical assumptions about a specific ethnic or social group. One of its most prevalent forms is the stop and search procedures of minority groups and foreigners.

Racial and ethnic profiling also occurs in the criminal justice system where persons belonging to minority groups often receive harsher criminal sentences. This is closely connected to discriminatory imprisonment which refers to amercing harsher sentences to a person because of ethnicity, race, national origin, or religion.

Discriminatory treatment in sentencing is also strongly connected to the fact that racial minorities often are not provided with public lawyers and they do not have the financial ability to afford a private one. Therefore, their voice is not heard, and they end up in prison for many years even though they might have committed an insignificant crime or no crime at all.

In our committee session, it is of utmost significance to establish regulations that define a certain range in which racial or ethnic factors can be used to evaluate someone's accountability and to decide their sentence or to eliminate these two practices, racial profiling and discriminatory imprisonment at their core.

DEFINITION OF KEY-TERMS

Racial Profiling

Racial Profiling is the discriminatory law enforcement practice of using outer characteristics, such as race, ethnicity, national origin or religion as one criterion among others to designate

the person suspicious for committing a specific crime and to run routine police practices, such as police stops, searches and questioning frisks.

Criminal Profiling

Criminal Profiling is the fair and objective law enforcement practice of using a person's psychological and behavioral characteristics as the only criteria to designate the person suspicious for committing a specific crime and to run routine police practices, such as police stops, searches and questioning frisks.

Discrimination

Discrimination is the differential treatment of persons or social groups because of stereotypical assumptions and generalizations that have arisen about them.

Discriminatory imprisonment

Discriminatory imprisonment refers to the imprisonment of people with a certain racial background with a harsher sentence or a different treatment as the one a white person would receive. Sentencing is in this case on the grounds of one's ethnicity and not their behaviour and previous criminal record, thus it is unfair.

Hate crime incident

A hate crime incident is a prejudice- and stereotype-motivated crime which occurs when a person is targeted because they are a member of a specific social or racial group.

Minority

A minority is a part of a population differing from the majority in some characteristics, such as race, ethnicity or culture and is considered inferior compared to the majority of the population. This group or individual often receives differential treatment.

Racial Disparity

Racial Disparity is observed when the proportion of a certain ethnic or racial group in the outcome of a statistic is larger than the proportion of this group in the whole population of a country.

Race

Race is a multifaceted term. The most common definition is the categorisation of individuals primarily by their different visible physical differences. Sometimes it is applied to groups who speak the same language, who have the same religion or ethnicity.

Terrorism

Terrorism is the unlawful use of violence, force or intimidation against civilians or property with the aim to achieve political goals.

Alienation

Alienations involves a problematic feeling of separation between a self and their work or milieu.

Disengagement

Disengagement is the process of a person who reduces their social activity and their involvement with past pursuits.

BACKGROUND INFORMATION

Types of racial profiling

Members of minority groups are often disproportionately targeted for “stop and frisk” and traffic stops. Identity checks by police officers, ostensibly to address irregular immigration are another manifestation of the issue. Profiling also occurs when force is increasingly used against vulnerable populations. Regarding immigration, ethnic profiling continues to occur at points of entry into the States, where customs and border agencies may force certain individuals to undergo additional security checks and interviews. Security measures and surveillance policies enacted in efforts to counter terrorism also motivate the use of biased policing. Profiling is also prevalent in criminal justice systems, where there is often a correlation between minority status and harsher sentences.

Causes behind racial profiling and discriminatory imprisonment

The most important cause of this issue is that law enforcement officials associate certain criminal behaviors with racial minorities. Influenced by previous incidents, they believe that an effective way to identify crime suspects is to single out a social group, a member of which has attempted this crime before.

Other factors that lead police officers to biased policing are generalizations and stereotypical assumptions. Many police officers think of immigrants and refugees as if they are enemies and criminals, whereas they see people with the same ethnicity as friends and allies. That is why they more easily suspect the minorities and target them for their routine police practices thinking that they came to their country to destroy its order. The same applies to judges who give harsher sentences to members of ethnic minorities.

Discriminatory imprisonment is also affected by difficulties pertaining to communication. A person of another origin cannot defend themselves in court or before the policemen, because they are not aware of the language spoken in court. They are also often not provided with public lawyers and due to financial hardships, they cannot afford a private lawyer. Moreover, many victims of the legal system do not get informed about their legal rights and the existing protective laws which may prevent them from reporting cases or pressing charges.

Nowadays, albeit to a lesser degree compared to the past, political parties propose racial profiling as a good method to ensure the population’s safety.

Harmful outcomes

According to international law, police officers are obliged to treat everyone with respect, while protecting the needs and rights of all victims. Therefore, discriminatory ethnic profiling

constitutes a breach of international law. Regarding race as one of the criteria to conduct routine police practices is both under- and over-inclusive. Under-inclusive, because law enforcement officials only investigate individuals with a certain racial background, thus other possible criminals are not detected. Over-inclusive, because police officers investigate all members of an ethnic group, many of whom are innocent. As a result, law enforcement becomes ineffective.

Such incidents discourage minority groups from reporting crimes and seeking police assistance, which generates high levels of distrust. EU-MIDIS II results¹ indicate that most people claim that they were treated with respect during the most recent police stops, while the reporting rates of hate crimes remain low suggesting a lack of trust to law enforcement. Vulnerable members of the community are made more vulnerable as they feel they do not have resources to protect their rights and personal safety.

Biased policing can also damage community relations, since it causes alienation, exclusion, unnecessary criminalisation, disengagement, detrimental health and socio-economic impacts.

Situation in the European Union

Although the European Union (EU) has introduced legislation² to combat racial and xenophobic discrimination since 2000, the problem persists, with the need for new measures recently highlighted by the Global Black Lives Matter protests. According to the results of the Fundamental Rights Agency's (FRA) second European Union-wide survey on migrants and minorities in 2017³, discrimination in law enforcement police practices is still present despite the numerous efforts of the European Union.

The respondents claimed that 14% of them experienced stops in a private vehicle, stop-and-search incidents on the street, or in public transport by the police in the 12 months preceding the survey. 40 % of those stopped believe that the police officer's decision was taken based on their racial background. Respondents with Asian and South Asian, North African, and Sub-Saharan African backgrounds, as well as Roma say that they were more frequently stopped by the police because of their immigrant or ethnic minority background.

It was proven that age and gender play a significant role in police checks. Young men with immigrant backgrounds seem average to be the most targeted group. These results prove

¹ "Second European Union Minorities and Discrimination Survey." European Union Agency For Fundamental Rights. *European Union Agency for Fundamental Rights*, 6 Dec. 2017, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-midis-ii-main-results_en.pdf

² "Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (L 180/22)." *EUR-Lex*, 29 June 2000, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2000:180:FULL&from=EN>

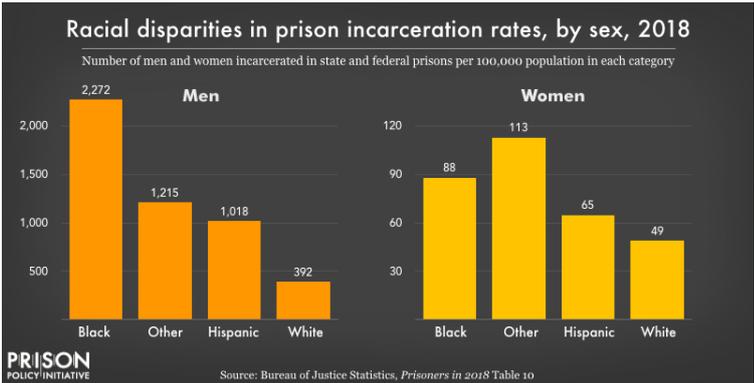
³ "Second European Union Minorities and Discrimination Survey." European Union Agency For Fundamental Rights. *European Union Agency for Fundamental Rights*, 6 Dec. 2017, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-midis-ii-main-results_en.pdf

that certain immigrant and ethnic minority groups are affected more than others by discriminatory police practices.

MAJOR COUNTRIES AND ORGANIZATIONS INVOLVED

United States of America

Racial profiling is very much present in the USA and it can be divided in 3 waves. The first wave revolves around the racial targeting of people with African descent by police since 1783, when they had to face slave patrols by armed police officials. A characteristic example of racial profiling is the murderous arrest of George Floyd on the 25th of May, 2020 in Minneapolis, which shows the discriminatory and violent behaviour of the police towards African Americans. The second wave concerns the prosecution of people coming from Middle Eastern and Muslim communities after the September 11th attacks and the third refers to all those who have 'Mexican characteristics' and hence they are considered illegal immigrants.'



As we can see from the graph, a Black man is seven times more likely to be sent to prison as compared to a white man. As for women, the difference between black and white prisoners is not so high, since female black prisoners are less than two times more than the white ones.

FIGURE 1 RACIAL DISPARITIES IN PRISON OF THE U.S. INCARCERATION RATES, BY SEX, 2018-PUBLISHED BY THE BUREAU OF JUSTICE STATISTICS

SOURCE: "VISUALIZING THE RACIAL DISPARITIES IN MASS INCARCERATION." PRISON POLICY INITIATIVE, 27 JULY 2020, WWW.PRISONPOLICY.ORG/BLOG/2020/07/27/DISPARITIES/#SLIDESHOWS/SLIDESHOW4/1.

Nevertheless, given that the population of white women in the U.S. is much higher, the racial discrepancy is a prominent issue for female members of minorities as well.

Romania

When it comes to Romania's involvement in the issue, it is of great importance to mention the case of Lingurar v. Romania which is a great example of police brutality in Romania against Roma and led to the first use of the term "ethnic profiling" concerning police action found to be discriminatory.

According to the applicant family, police officers broke down the unlocked door of their house and entered by force. They beat and injured the whole family, showing no respect for their rights. The police entered this family's house with the justification that a forest ranger informed them that on 7 December 2011 Mr Aron Lingurar had taken home timber which had been illegally cut from the forest and that he aggressively confronted the forest rangers. They stated the following mention: "The Vâlcele municipality consists of the villages Vâlcele, Araci, Hetea, and Ariuşd. Out of a total population of 4,300 inhabitants, 2,902 are of Roma ethnicity. Most of the members of this ethnicity do not have a steady income and make ends meet from social benefits, the sale of timber stolen from the forest, seasonal and occasional work, and from crime – mostly thefts.". In the aforementioned statement, it is clear that the

police-behaviour was the result of generalisations about the criminality of Roma people. The police officers targeted this family not based on their actions, but of their ethnicity.

The court characterised this law enforcement practice as discriminatory exercise under the European Convention, finding a violation of Article 3 “No one shall be subjected to torture or to inhuman or degrading treatment or punishment. “ and 14 “The enjoyment of the rights and freedoms outlined in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

Egypt

In Egypt, the problem of racial profiling is mainly detected against Copts, the Nubians, the Bedouins, the Berbers, the Baha’i and black Egyptians. In 2015, it was reported to the United Nations Human Rights Council that people that were promoting atheism had been arrested without any valid accusation. Adding to that, numerous reports suggest that Christians are subject to torture with a characteristic example being the case of a Coptic Christian who was tortured to death by ten Egyptian police officer in 2016. Lastly, the Egyptian authorities have prosecuted Uyghurs in cooperation with the Chinese authorities, which is believed to have involved human rights violations. More specifically, in 2017 62 Uyghurs were arrested and it is reported that they were not informed on the grounds of their detention, while they were denied access to legal aid.

China

Some 800,000-2,000,000 Uyghurs and other Muslims, including ethnic Kazakhs and Uzbeks, have been detained since April 2017. The 11 million Uyghurs living in Xinjiang have continued to suffer from a decades-long crackdown by Chinese authorities.

Most of the detainees have not been charged with crimes, while they have no legal avenue to challenge their detentions. Most of them have been prosecuted for behaviours such as attending services at mosques or travelling to countries such Turkey or Afghanistan. Hence, the reasons of their prosecution suggest that they are considered extremists solely due to their religious practices.

Pakistan

Afghan and Pashto-speaking people who live on both sides of the Afghan-Pakistani border are associated with perpetrating attacks. Ethnic profiling is mostly used in Punjab province and the capital Islamabad. The discriminatory treatment is limited to a particular class – laborers, daily wage workers, hawkers, small shopkeepers and others who live in low-income communities. Police officers were instructed by the Punjab’s government to identify a Pashtun at the community level to assist with identification processes. The residents are expected to report any suspicious person or activity, specifying terrorists as “Pashtuns and Afghans”.

India

Concerning the contemporary situation regarding ethnic profiling in India, African people are refused basic rights, such as buying groceries or renting an apartment, because there is the

belief among Indians that African people imported the coronavirus and are responsible for the lockdown. According to many Africans living in India, the same belief is shared by police officers, thus African people cannot complain. As a result, they are not provided with the necessary police security.

Germany

Racial profiling has been officially designated as illegal in Germany after the decision of a court in the state of Rhineland-Palatinate. It violates the anti-discrimination article of Germany's constitution, known as the Basic Law.

Nevertheless, in 2018 a court in Munich ruled that authorities could use skin colour as criterion for their work in cases "when the police have concrete indications that persons with darker skin incur criminal penalties over-proportionally more often"⁴ in a certain area. Racial profiling can have deadly consequences, recalling the premeditated murders of immigrants by the right-wing extremist National Socialist Underground (NSU).

Russian Federation

Racial profiling of Russian law enforcement officials is mainly targeted towards Asian people. A very alarming incident took place in an underground passage in southern Moscow on 20 July 2019 where a young man recorded police officers holding passports of men who looked Central Asian with the excuse of an ongoing "Special Operation-Illegal". The young man refused to give his passport to the police officers, thus he was held with two other men for two nights in a sealed windowless cell with the lights on all day, giving them only one set of sheets to share. They did not supply them with water and the food they were given was inedible.

United Kingdom (UK)

Counter-terrorism measures in the United Kingdom have resulted in increased ethnic profiling. Section 44 of the Terrorism Act of 2000⁵ permits police officers to use stop-and-search powers without reasonable suspicion in authorized areas (e.g. London) of high risk of terrorism. Between 2001 and 2003, the number of people targeted under this provision rose from 8,550 to 21,577 throughout the United Kingdom. These stops disproportionately targeted blacks and Asians, who were four to five times more likely to be stopped than whites.

TIMELINE OF EVENTS

DATE	DESCRIPTION OF EVENT
Since 1783	1 st wave of racial profiling in the US: targeting of

⁴ "Racial Profiling: Germany Debating Police Methods." *DW.COM*, Ben Knight, 8 July 2020, www.dw.com/en/german-police-racism/a-54090661.

⁵ "Terrorism Act 2000." *Legislationline - International Norms and Standards on Human Dimension Issues*, 20 July 2000, www.legislationline.org/download/id/4602/file/UK_Terrorism%20Act%202000.pdf.

	people of African descent
July 20, 2000	Terrorist Act of the UK
September 11, 2001	2 nd wave of racial profiling in the US: terrorist attacks by Al-Quade
2001-2003	Rise of targeted people for terrorism from 8,550 to 21,577 in the UK
2004-2005	Arrest of 3,000 Bedouins in response to bombings in Taba and Sharm el-Sheikh
Mid to late 2000s	3 rd wave of racial profiling in the US: revolves around immigrants
November 2014/December 21, 2017	Arrests of people promoting atheism in Egypt
November 2016	Torture of a Coptic Christian man to death in Egypt
Since April 2017	Detainment of 800 thousand-2 million Uighurs and other Muslims in China
2018	Munich court's decision upon the use of ethnic origin by the police
April 16, 2019	Case of Lingurar v. Romania
June 2019	Detainment of 10 Muslim men in Cologne
July 20, 2019	Imprisonment of an Asian young man without objective reasoning in Moscow
May 25,2020	George's Floyd arrest and murder

RELEVANT UN RESOLUTIONS, TREATIES AND EVENTS

International Covenant on Civil and Political Rights⁶

It is an international Covenant that was entered into force on 23 March 1976 by the General Assembly. Every State that allows racial profiling and discriminatory imprisonment to be exercised violates the obligations under the Article 26 to ensure that every person, regardless of race, is treated equally before the law.

International Convention on the Elimination of All Forms of Racial Discrimination⁷

It is an international Convention that was entered into force on 21 December 1965 by the General Assembly. According to article 2 states are required to engage in no act or practice of racial discrimination, while article 5 stresses the importance of equality before the law. 5a specifies all individuals should get equal treatment before the tribunals and all other organs administering justice.

Excerpts from the report of the Commission on Human Rights on its fifty-eighth session for consideration by the Economic and Social Council at its resumed organizational session for 2002⁸

The report of the Commission on Human Rights in its 58th session for consideration by the Economic and Social Council in 2002 includes draft decisions recommended for adoption by the Economic and Social Council. Clauses 2b and 8c suggest that measures against racial profiling should be taken, whereas clause 44 emphasizes that the discrimination on the grounds of race, colour, descent or national or ethnic origin used to struggle against terrorism has to be eliminated. Similar to the 44th clause is the 2nd Basic General Principle of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action in 2005⁹.

Combating defamation of religions¹⁰

A draft resolution submitted by Morocco in the 65th session of the 3rd Committee of the General Assembly. Clause 20 urges States to ensure that all public officials respect individuals regardless of their racial or religious background and that they are provided, if necessary, with the appropriate training.

Protection of human rights and fundamental freedoms while countering terrorism¹¹

⁶ "OHCHR | International Covenant on Civil and Political Rights." 23 Mar. 1976, www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.

⁷ "OHCHR | International Convention on the Elimination of All Forms of Racial Discrimination." 4 Jan. 1969. www.ohchr.org/en/professionalinterest/pages/cerd.aspx.

⁸ "Human Rights Questions: Excerpts from the report of the Commission on Human Rights on its fifty-eighth session for consideration by the Economic and Social Council at its resumed organizational session for 2002." *United Nations Digital Library System*, 24 May 2002. <https://digitallibrary.un.org/record/466083?ln=en>

⁹ "World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Comprehensive Implementation of and Follow-up to the Durban Declaration and Programme of Action." *United Nations Digital Library System*, 2006, <https://digitallibrary.un.org/record/560839?ln=en>

¹⁰ "Combating Defamation of Religions." *United Nations Digital Library System*, 19 Nov. 2010, <https://digitallibrary.un.org/record/693904?ln=en>.

A draft resolution submitted by many Member States in the 65th session of the 3rd Committee of the General Assembly. Clause 6i urges States, while countering terrorism, to check with full respect of the obligations under international refugee and human rights law whether their refugee status is valid or not in case credible and relevant evidence exist that indicates that the person has committed any criminal acts, terrorist acts among others. This clause is really important, since it gives the base of how law enforcement officials have to behave while countering terrorism, so in your resolution you can add clarifications on how such a goal can be achieved.

Elimination of racism, racial discrimination, xenophobia and related intolerance¹²

A Report of the 3rd Committee of the General Assembly in the 71st session on 8 December 2016. In clause 23 reference is made to the adverse consequence of racial profiling regarding loss of trust of minorities in police and in this regard suggests to recruit people with different ethnic backgrounds in law enforcement agencies and impose sanctions to public officials found guilty of racially motivated violence or of using hate speech.

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

Resolution on respect for human rights in the European Union (1997)¹³

A resolution published by the European Parliament in 1997. Clause 95 calls on Member States to train the police as to how to conduct themselves with regard to the cultural particularities of persons of foreign origin or who belong to ethnic minorities.

COUNCIL DIRECTIVE 2000/43/EC of 29 June 2000-Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin¹⁴

It is an effort of the European Union to ensure equal treatment for all persons. Article 4 allows Member States to exercise differential treatment based on ethnic origin. This shall not constitute discrimination when there is legitimate reason to believe that a person was involved in a particular activity because of their ethnic characteristics. This article can be misused by law enforcement agencies, thus it needs more elaboration on the methods to determine whether this objective is legitimate or not.

Policy on eliminating Racial Profiling in law enforcement¹⁵

¹¹ "Protection of Human Rights and Fundamental Freedoms While Countering Terrorism." *United Nations Digital Library System*. 18 Nov. 2010, <https://digitallibrary.un.org/record/693903?ln=en>.

¹² "Elimination of Racism, Racial Discrimination, Xenophobia and Related Intolerance." *United Nations Digital Library System*, 8 Dec. 2016, <https://digitallibrary.un.org/record/851984?ln=en>.

¹³ "Resolution on respect for human rights in the European Union." *EUR-Lex*, 1997, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:51998IP0468>

¹⁴ "Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (L 180/22)." *EUR-Lex*, 29 June 2000, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2000:180:FULL&from=EN>

A Policy published by the Ontario Human Rights Commission (OHRC) which is an effort for law enforcement organizations to meet their obligations under the *Charter of Rights and Freedoms (Charter)* and the *Ontario Human Rights Code (Code)* and to respect the rights of all people upholds the rule of law. It completely covers the subject as it includes the definition of racial profiling, its adverse effects and many recommendations on how to tackle the issue which you can use as inspiration for your resolutions.

The Leadership Conference on Civil and Human Rights¹⁶

The Leadership Conference on Civil and Human Rights constitutes of 210 national organizations with the aim to protect the civil and human rights of every individual in the USA. The Committee called on the U.S. government to pass the End Racial Profiling Act (ERPA) in 2009 and recommended possible clauses that could be included in the ERPA.

POSSIBLE SOLUTIONS

Raising awareness and training of public officials

It is of utmost significance to inform public officials, especially the law enforcement officials about the enormous extent that this issue has taken as well as the dangers and the negative effects that were enumerated in the "Background information" section. Consistent trainings of police officers can be organized, to refresh their knowledge with the new data about racial profiling.

Control before recruitment

Stereotypical assumptions are usually passed by one's family, thus it is really difficult to fully eliminate those beliefs from their mind. Therefore, it would be clever for all the police officers and other public workers to go through an interview and additional tests where incidents with people of different descent will be presented and the participants will be asked how they would react in this case. If the ones responsible judge that the answer given is discriminatory, then the applicant would be eliminated.

Variety in recruitment

Recruiting people from different backgrounds in law enforcement and judicial agencies would increase the objectivity in their decision when it comes to the routine police practices or the sentencing of the defendant. The public officials can objectively decide amongst themselves, since it has to be accepted by the majority of the officials. Furthermore, it would increase the minorities' trust towards law enforcement and the members would not get convicted on the grounds of their ethnicity.

Provision with legal representation

¹⁵ "Policy on Eliminating Racial Profiling in Law Enforcement." *Ontario Human Rights Commission* /, www.ohrc.on.ca/en/policy-eliminating-racial-profiling-law-enforcement# Toc17977350.

¹⁶ "Ending Racial Profiling Henderson." *The Leadership Conference on Civil and Human Rights*. 15 Mar. 2019, <https://civilrights.org/resource/ending-racial-profiling-henderson/>.

Every individual should be provided with a public lawyer to defend them in court and prohibit discriminatory imprisonment. In case the cost of such an initiative is too high, the government should ensure that every defendant is well aware of the grounds he has been called to court on, of their legal rights, the legal benefits that could result through e.g. pleading guilty. To achieve that, translators should help at this procedure as well as in pre court-practices, e.g. investigations, since the communication difficulties are a common problem.

Monitoring and Data Collection

Monitoring police activity would be an effective way, to keep people informed about the issue with reliable numbers. Moreover, it is important to implement data collection and analysis to identify and reduce racial and discriminatory profiling.

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