

Forum: Second Human Rights Council

Issue: Building an international framework for preventing racial bias in judicial systems

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Introduction

The world has undoubtedly come a long way since the times of widespread slavery and oppression of certain races, whether it be through abolition or civil rights movements. However, even in the 21st century, there is still much to be desired in terms of racial equality. One area where this inequality manifests itself is the judicial systems around the world, as evidence suggests that inherent prejudices people hold against other races may influence decisions, sometimes without the perpetrators even being aware of it.

Racial bias also makes an appearance in more tangible aspects, including racial profiling of citizens. Although results vary, racial profiling has generally been an ineffective tool from both practical and more abstract perspectives. This system is not only ineffective in crime prevention, but can leave a damaging psychological mark on citizens who will undoubtedly feel wrongly treated based on an immutable quality they were born with. The resulting animosity that grows between minority races and the law often increases the very tensions that had caused systems like racial profiling to be considered in the first place.

Of course, it is virtually impossible to completely get rid of all innate psychological biases based on race. However, the committee can still take measures to prevent combat the effects these prejudices may hold in practical settings like judicial systems. Race currently plays a major role in deciding the outcomes of court cases; for example, a 2015 study by Maya Sen of the Harvard Kennedy School found that decisions of black judges were almost 10 percent more likely to be reversed than white judges, regardless of the type of case involved. Finally, given the nature of the topic, it is all the more imperative to ensure that any policies implemented can be applied worldwide and better the treatment of all.

Definition of Key Terms

Racial Profiling

A policy where law enforcement officials use race or ethnicity as a basis for heightening suspicion about a suspect's wrongdoings. Judicial systems start on the streets, where police officers can use tactics such as flagging predominantly African American drivers and therefore contribute to the racial bias prevalent in courts.

Racial disparity

Racial disparity occurs within a criminal justice system where certain races get disproportionate representation.

Illegitimate racial disparity

This situation slightly differs from the one above in that racial disparity results in distinct treatment of people solely based on race, meaning that two people being charged for the exact same crime may have different fates based on their ethnicity.

Institutional racism

Institutional, systemic, or structural racism is long-term discrimination stemming from institutions and policies, such as policing guidelines that disproportionately affect African Americans. Due to its subtle nature, institutional racism is often harder to detect, despite causing much more damage than individual acts of racism; additionally, systemic racism will occur regardless of the intentions of those in charge, as the policies will still remain the same. The majority of solutions decided upon by this committee should address institutional racism in the context of judicial systems.

Stop-and-frisk

The stop-and-frisk policy allows police officers to temporarily “stop” and detain citizens on the streets they find suspicious, and “frisk” them for any weapons or illegal substances they may have. The court case *Terry v. Ohio* upheld the constitutionality of this policy as long as the police were acting within reasonable boundaries. However, it has amassed controversy due to the racial connotations involved, as in the first half of 2019, 60 percent of citizens stopped in New York City were black and only 10 percent were white, although there are twice as many white citizens in the city. This policy is most known for its use in NYC, but variants of it occur worldwide; in Europe, Romani people are up to three times as likely to be stopped by police than others.

Background

Racism can sometimes seem like an arbitrary topic, but this context serves up a multitude of statistics that provides a compelling argument that racial bias clearly exists within our judicial systems. Research tells us that minority drivers are more often stopped during “random” police check-ups, despite being no more likely to actually be in possession of an illegal substance. Furthermore, detainment occurs at a higher rate for charged minorities than whites, with a study from New York estimating the disparities at 10 percent for New York City and 33 percent for the rest of the state. Racial bias in judicial systems starts from the local levels of society and slowly but surely ripples out as we go up the ladder. A report from the Special Rapporteur to the UNHRC notes how implicit bias regarding minorities may affect criminal justice decisions due to stereotypes regarding the violence levels of certain races. Additionally, this perception may extend to areas such as the war on drugs, as research conducted in North America found that African Americans were more than 10 times as likely to be sentenced for illegal possession of drugs despite committing those offences at more or less the same rate as other races. In essence, every little decision or policy counts, as the small disadvantage a minority ethnicity may receive in stages like bail can have lasting effects during their trial or detainment.

As for international agreements, Articles 2 and 26 of the International Covenant on Civil and Political Rights forbids race playing a factor in deciding how the law is applied, stating that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race.”

Effect of wealth on criminal justice systems

Money may seem like a tangential issue here, but wealth and race are tightly intertwined within this discussion. In a shadow report written to the UNHRC back in 2013, a research and advocacy center called the Sentencing Project describes that the United States effectively has two sets of criminal justice systems: one for wealthier citizens that can afford constitutional protections and liberties, and another for minorities and/or more impoverished people. This disparity between the outer just appearance of criminal systems and their realities ultimately affects the proportions of African American inmates, as roughly one-third of black males will find themselves in jail at some point in their lives.

Some argue that minority races simply commit certain crimes at a higher rate than others, pointing to statistics that affirm this suspicion in the cases of violent and property crimes. However, socioeconomic factors are more likely to be behind this statistic, as researchers found that neighborhoods with lower levels of income committed more crimes regardless of racial composition.

Racial bias during trials

Disparities caused by race continue as we travel further through the judicial system, with wealth still playing a role here. In 1963, the landmark Supreme Court case *Gideon v. Wainwright* made it mandatory for states to provide attorneys for citizens that could not afford one. However, this decision does not make specifications of the quality of attorneys involved, and sure enough, there are fundamental issues with the indigent defense attorneys

around the world. When forced to take over a case, an appointed attorney has little incentive to expend more effort than the minimum requirements to circumvent punishments from the state. Even in economically developed countries like the United States, not enough financial backing is given to address this issue. For example, according to the Sentencing Project, agencies had been allotted nearly 6 billion in federal grants that could have been diverted to this area, but almost two-thirds of them reported that they did not spend any of those funds on indigent defense. Education seems to be an issue here, as 54 percent of agencies reported that there were unaware that those funds could be used for this purpose. Because this lack of attention given to indigent defense attorneys disproportionately affects minority communities the most, it creates a vicious cycle of implicit racial bias as public defenders have to choose which of their numerous cases to put forth their greatest effort into. As conviction rates are artificially raised for minorities due to the lack of quality defense, these public defenders are more likely to focus on cases that seem more “winnable,” a decision that seems to be racially charged.

Major Parties Involved

European Union

Earlier this year, the European Court on Human Rights directly addressed ethnic profiling for the first time and deemed it unjust, adding onto its broader condemnation of discrimination. Racial profiling certainly persists in this continent, especially regarding the Romani people in Central and Eastern Europe, who are subject to more frequent police raids, stop-and-frisks, and border checks. The Commissioner for Human Rights of the Council of Europe has condemned such actions as infringing upon article 14 of the European Convention on Human Rights, and has also called for more robust data collection regarding this issue in order to highlight the ethnically charged actions of law enforcement officials. *Lingurar v. Romania* was a recent court case where police raided a village primarily consisting of Roma descent, where the European Court ruled that the police’s actions infringed upon Article 3 of the European Convention on Human Rights.

United States

The United States has a long history of racial discrimination, and despite its extensive civil rights movement and economic advancements, leaves much to be desired in terms of a race-blind criminal justice system. It is home to one of the most prominent examples of stop-and-frisk in New York City, where African Americans have consistently over two decades been searched more frequently despite not exhibiting more suspicion than their racial counterparts. The US also still feels the effects of its largely disastrous war on drugs, having contributed to racial disparity and false stereotypes that African American are more likely to be drug dealers.

The Sentencing Project

Based in the capital of the United States, this organization strives to bring light to issues regarding racial bias’s role in the criminal justice system. For example, it has submitted a shadow report to the Human Rights Council outlining the systemic racism that pervades throughout the US judicial system, and has conducted thorough research

to show that implicit preconceptions based on ethnicity unfairly disadvantage minorities under the law. The Open Society Justice Initiative carries out similar goals, but on an international level.

Previous Attempts to Resolve the Issue

As mentioned above, court decisions like *Gideon v. Wainwright* aimed to close this disparity by providing attorneys for lower-income defendants, which would in theory combat racial bias as minority groups are generally worse off on the socioeconomic ladder. While well-intentioned, the quality of this state-appointed defense is quite lacking in many ways and still leaves poorer citizens with a clear disadvantage, contributing to the higher conviction rates tied to minority races. Eric Holder, former Attorney General of the United States, claimed that “America’s indigent defense counsel systems exist in a state of crisis.”

- Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action, 20 April 2015 (A/HRC/29/46)

This Report of the Special Rapporteur from the UNHRC takes the discussion of racial and ethnic profiling to the international level, submitted pursuant to HRC resolutions 25/32 and 15/53. The contextualization provided here discusses how although the United States is usually the example every turns toward when discussing racial profiling, following the events of 9/11, this policy occurs globally in Europe, Africa, and the Middle East in response to economic crises or other factors. The Special Rapporteur also mentions that action at the international level has already been taken to combat racial profiling, such as elaboration of an international legal framework, but the problem nevertheless persists worldwide. Other solutions already explored include standard protocol such as enhanced data collection and training of officers.

The first section in this report discusses the different ways racism manifests itself in the policies of the law enforcement officers. Stop-and-frisk occurs around the world, including a certain South Pacific State where black males are stopped at a rate that is more than two times higher than expected based on their population proportion. Similar behavior occurs during traffic stops, immigration checkups, metros, mosques, border crossings, and whatnot. This discrimination even boils over to physical violence, as those of African descent in a certain Latin American state were twice as likely (given their population representation) to have lethal force used against them. Finally, research has also suggested that the somewhat arbitrary nature of criminal justice systems allows racial bias to occur, describing a strong correlation between minority groups and more severe sentences.

The second section discusses measures taken on national and international levels to combat the issues described above. Articles 2, 4, 5 and 7 of the International Convention on the Elimination of All Forms of Racial Discrimination outlaws racial profiling, and other global agreements call for education of law enforcement officers on the rights citizens are entitled to. The Durban Declaration and Programme of Action called upon States to take the initiative of designing and executing plans to combat racial profiling. Unfortunately, not all States have taken action at the national or regional levels to establish this in a legal framework. Because policies like racial profiling set off a chain of events that ultimately lead to racial bias in judicial systems, it is necessary to take note of this issue as well.

Possible Solutions

- It may be effective to organize a resolution on this issue based on the different stages of the criminal justice system, such as law enforcement, pretrial, prosecution, and probation. For example, some clauses can focus on the prevention of racial profiling and policies that start off the racial discrimination present in judicial systems, then others can address what happens in courtrooms after citizens have been detained.
- As mentioned in the Special Rapporteur report, data collection should definitely be addressed in resolutions in order to detect instances of racial bias. This includes the gathering of data, its storage, and the prevention of misuse or tampering with it. One example where this could be used is in the pretrial process where minority citizens may be prohibited from entering diversion programs or be given higher bail amounts, and having concrete evidence supporting a conclusion here with help decide the laws that should be implemented. Of course, one must also take into consideration the right to privacy when outlining any clauses about data collection. Finally, the statistics collected should contribute in some meaningful way to better law enforcement practices, and would be best if implemented on a global scale.
- One should also address the socioeconomic factors tied with race, such as ensuring the quality of state-appointed attorneys for indigent defendants. Consider how much of the state budget should be allocated toward leveling the playing field for minorities who do not have access to high-level lawyers or benefits. Potential areas of focus include the recruitment of attorneys specifically interested in reducing racial bias and/or raising the standards expected of assigned defense attorneys (and the punishments accordingly).
- Training of law enforcement officials and providing them with clear, race-neutral guidelines is also necessary to prevent racial bias further up in the judicial system. This includes basic protocol such as having a genuine reason for suspicion before proceeding with stop-and-frisk. One can also consider the education of judges in charge of bail decisions on how to adhere to the legal framework of race-neutrality as closely as possible.
- Enhancing the relationship between minority communities and police officers may also be a worthwhile endeavor, which could include measures such as better outreach or sharing of information with them.
- As a general guideline, work toward systemic change rather than short-term solutions to effectively combat implicit racial bias. One must also consider the international scope of this topic, which raises issues of combating economic barriers for LEDCs that may find it more worthwhile to spend the government budget on issues other than reducing racial bias in judicial systems.

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