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OPEN SOCIETY JUSTICE INITIATIVE

Reducing Ethnic Profiling in the European Union



A Handbook of Good Practices



OPEN SOCIETY
FOUNDATIONS

Reducing Ethnic Profiling
in the European Union:
A Handbook of Good Practices

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This report was written by Rachel Neild, senior advisor on ethnic profiling and police reform at the Open Society Justice Initiative, and Professor Lee Bridges of the University of Warwick, UK. Extensive research and case studies were contributed by Lanna Hollo, Rebekah Delsol, and Sebastian Kohn. Shamus Brennan also provided research support. The report was edited by David Berry, James Goldston, Indira Goris, and Robert Varenik.

In the research process for this report, we reached out to police authorities and officers across the European Union, as well as to non-discrimination bodies, and experts from academia and civil society. We are enormously grateful to the many experts who provided materials for the case studies and reviewed our description of their work. We appreciate their frank assessments of the challenges of introducing new practices, and tackling hard subjects, and hope that this handbook can serve to continue this conversation and deepen these practices. We consulted too many experts to name everyone individually in these acknowledgements, and some sources requested that they not be named.

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As is frequently the case, events on the ground have, in some settings, overtaken the publication schedule of this report. Significant reforms in the UK in particular have brought new standards and developments that have superseded some of the practices

described in this report. The case studies presented here are not intended as a current historical record, but rather as a compilation of good practice that may serve as an example of positive approaches that can be drawn on from one setting to another.

The Open Society Justice Initiative bears sole responsibility for any errors or misrepresentation.

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List of Case Studies

*The case studies marked with * have previously appeared in the European Fundamental Rights Agency (FRA) publication, “Towards More Effective Policing; Understanding and Preventing Discriminatory Ethnic Profiling: A Guide,” Vienna: FRA, 2010. Several of the shared case studies that appear in this handbook have been updated.*

UNITED KINGDOM	The Equality Act 2010
NORTHERN IRELAND	Statutory Duty with Exemptions in Non-Discrimination Legislation
FRANCE	Obligation of Non-Discrimination in the National Police Code of Conduct
NORTHERN IRELAND	Police Code of Ethics
AUSTRIA	Legal Guidelines on Non-Discriminatory Conduct
UNITED KINGDOM	PACE 1984 and Other Stop and Search Legislation*
BELGIUM	Brussels Airport Information-based Behavioral Profiling
UNITED KINGDOM	Customs Guidelines on Selection and Searches of Persons
NETHERLANDS	Practical Guidance on Non-Discriminatory Treatment in Border Controls
FRANCE	Police Stop Powers for Immigration Control Purposes

IRELAND	National Action Plan Against Racism
IRELAND	Policing Plan 2008
GREECE	Requirement to Investigate Racist Intent
UNITED KINGDOM	Independent Police Complaints Commission
BELGIUM	Comité P
FRANCE	National Commission on Police Ethics
IRELAND	Garda Síochana Ombudsman Commission
NORTHERN IRELAND	Office of the Police Ombudsman
NETHERLANDS	National Ombudsman
UNITED KINGDOM/ NORTHERN IRELAND	Northern Ireland Human Rights Commission's Research: <i>Our Hidden Borders: The UK Border Agency Power of Detention</i>
UNITED KINGDOM	Equalities and Human Rights Commission Investigation: <i>Stop and Think!</i>
DENMARK	The Danish Institute of Human Rights Research <i>Ethnic Profiling in Denmark—Legal Safeguards within the Field of the Work of the Police</i>
UNITED KINGDOM	The London Metropolitan Police Authority Scrutiny Panel on Stop and Search
UNITED KINGDOM/ NORTHERN IRELAND	Policing Board Thematic Investigation into Children and Young People
UNITED KINGDOM	The Communities and Local Government Committee Review of the Prevent Program
UNITED KINGDOM	Merseyside Police Review of Stop Data
UNITED KINGDOM	West Yorkshire Police Use of BlackBerrys® to Record Stop Data
HUNGARY AND SPAIN	Reducing Ethnic Profiling through the Introduction of Stop Forms
NETHERLANDS	Study of Preventive Stop Powers
UNITED KINGDOM	Section 95 Data
BELGIUM/GERMANY/ITALY	European Network Against Racism Supplemental Reports on Ethnic Profiling
RUSSIA	Ethnic Profiling in the Moscow Metro
FRANCE	Ethnic Profiling in Paris

UNITED KINGDOM	Profiling Populations “Available” for Stop and Search
AUSTRIA/BELGIUM/BULGARIA/ITALY/ ROMANIA/SLOVAKIA	FRA Survey on Minorities’ Experience of Law Enforcement
IRELAND	Attitudinal Survey of Traveller and Ethnic Minority Communities
UNITED STATES	Attitudinal Survey of Young New Yorkers
UNITED KINGDOM	Police Stops and “Reasonable Suspicion”
UNITED KINGDOM	The Views of the Public on Stops and Searches
BULGARIA/HUNGARY/SPAIN	Views of the Police and Public on Stops and Searches
BELGIUM	Roundtables on Community Policing in Diverse Neighborhoods
NORTHERN IRELAND	Beyond the Margins: Building Trust in Policing with Young People
IRELAND	Singled Out: Exploratory Study on Ethnic Profiling in Ireland and its Impact on Migrant Workers and their Families
DENMARK	Media Reporting of Police Stop and Search Operations
SWEDEN	Swedish Brunch Report Radio Show
UNITED STATES	Ending Ethnic Profiling Enhances Effectiveness
BELGIUM	Judicial Control of the Use of Special Investigative Techniques
UNITED KINGDOM	National Intelligence Model
UNITED KINGDOM	Border Agency Harm Scoring Matrix
SPAIN	Using Stop Data in Supervision and Management
UNITED KINGDOM	Computerized Monitoring of Individual Officers’ Stops in Hertfordshire*
UNITED KINGDOM	London Metropolitan Police Service’s Operation Pennant to Monitor Area Based Profiling*

UNITED KINGDOM	“Know Your Rights” Leaflets*
UNITED KINGDOM	“Go Wisely: Everything you need to know about stop and search” DVD*
UNITED KINGDOM	“Know Your Rights” Mobile Application
HUNGARY	Civilian Monitoring through Police Ride-Alongs
AUSTRIA	Airport Monitoring of Asylum Procedures
FRANCE	Monitoring Treatment of Persons Awaiting Deportation at Airports
UNITED KINGDOM	Informing Persons of the Reason for a Stop and Search
UNITED KINGDOM	Monitoring the Quality of Encounters by the Hertfordshire Constabulary*
AUSTRIA	Courteous Forms of Address*
GREECE	Prohibition of Racist Language
IRELAND/NORTHERN IRELAND	Diversity Works Training*
NETHERLANDS	Leadership Training
UNITED KINGDOM	Youth-Police Training on Stop and Search*
SWEDEN	Police and Youth Sharing Experiences
UNITED KINGDOM	Operation Nicole Counter-Terrorism Training
UNITED KINGDOM	Behavioral Assessment Screening System (BASS) Training and Passenger Assessment Screening System (PASS)
NETHERLANDS	Amsterdam’s Information House Training on Radicalization
BELGIUM	In-House Expertise on Islam
UNITED KINGDOM	Practice Orientated Package and Next Steps
NORTHERN IRELAND	Creating a More Balanced Police Service in Northern Ireland
SWEDEN	Diversity Recruitment Projects
SWEDEN	Well-Intended Diversity Promotion that Backfired
NETHERLANDS	“Safe Climates” Initiatives

UNITED KINGDOM	Black Police Associations
UNITED KINGDOM	MPS Association of Muslim Police
NETHERLANDS	Role of National Diversity Unit in a Decentralized Policing System
IRELAND	Garda Racial and Intercultural Unit
IRELAND	Bray's "Garda on the Beat"
NETHERLANDS	Community Policing in Amsterdam
BELGIUM	Brussels North
UNITED KINGDOM	Police ESOL
UNITED KINGDOM	London MPS Cultural and Communities Resource Unit
UNITED KINGDOM	London Metropolitan Police Service Consultation Structures
UNITED KINGDOM	Muslim Safety Forum
UNITED KINGDOM	Community Stop and Search Scrutiny Panels: West Yorkshire Police and Suffolk Constabulary
IRELAND	Dublin North Central Divisional Forum with New Communities
UNITED KINGDOM	Strathclyde Police's Counter-Terrorism Community Consultation
UNITED KINGDOM	National Accountability Board for Schedule 7 of the Terrorism Act
UNITED KINGDOM	Manchester Airport Independent Advisory Group
UNITED KINGDOM	Manchester Airport Critical Incident Response
SWEDEN	Special Initiatives Working with Hard-to-Reach Groups
UNITED KINGDOM	Strathclyde Police's Operation Reclaim
UNITED KINGDOM	Fair Cop-Engaging Young People through Social Media
IRELAND	Improving Police Relations with Travellers
UNITED KINGDOM	London Metropolitan Police Service Muslim Contact Unit

Introduction

Ethnic profiling by police in Europe is a widespread form of discrimination. By focusing on appearance rather than behavior, police who engage in ethnic profiling violate basic human rights norms. Ethnic profiling is also inefficient: it leads police to focus on racial and ethnic traits rather than genuine indicators of suspicion, and results in stopping and searching large numbers of innocent people. Fortunately, better alternatives exist—approaches to policing that are more fair and more effective. This handbook documents those approaches and provides guidance for police officers, other law enforcement officials, and policymakers in how to reduce ethnic profiling. The guidelines and case studies set forth in the following pages are intended to help cut down on discrimination and increase police efficacy.

Ethnic profiling is the practice of using ethnicity, race, national origin, or religion as a basis for making law enforcement decisions about persons believed to be involved in criminal activity. Ethnic profiling can result from discriminatory decision-making by individual law enforcement officers, or from law enforcement policies and practices that have a disproportionate impact on specific groups without any legitimate law enforcement purpose. It is often the result of beliefs deeply-ingrained in individual law enforcement officers and even whole institutions and the societies in which they operate.

While not a new phenomenon, ethnic profiling has increased in the European Union in recent years because of two factors: (1) rising concern about illegal immigration into and movement of undocumented migrants within the European Union, and (2) the threat posed by terrorism in the aftermath of September 11th terrorist attack in the United States and the subsequent March 2003 terrorist bombings in Madrid and July 2005 bombings in London. These trends are described in detail in the Open Society Justice Initiative's 2009 report *Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory*.

The United Nations, the Council of Europe, and the European Commission have highlighted ethnic profiling as a particular area of concern with respect to discriminatory policing practices. International human rights monitoring bodies have likewise highlighted ethnic profiling as an area of concern.

The first step in addressing ethnic profiling is to admit its existence and recognize its discriminatory nature. The next step is deciding what to do about it. The final step is implementing new policies and practices that reduce ethnic profiling and replace it with more reasoned and effective procedures. *Reducing Ethnic Profiling in the European Union* aims to assist in this process by offering diagnostic questions, providing ideas and models of proven good practice, and identifying challenges and impediments to reform. It is the result of a thorough review of existing laws and relevant academic literature, field testing of specific reforms, and extensive interactions with state authorities, law enforcement agencies, civil society organizations, and local ethnic minority communities across the EU.

Ethnic profiling is not an easy issue to resolve. Law enforcement agencies may feel that a focus on ethnic profiling unfairly singles them out as racist. For ethnic minority persons and communities, discussions of ethnic profiling highlight stereotypes about minorities and offending.

But while discussions of discrimination and racism are never easy, reducing ethnic profiling can be a win-win proposition that benefits law enforcement agencies and the many communities they serve. Both research and first-hand experience—exemplified in the case studies throughout this handbook—demonstrate that adopting good practices not only supports fairer policing but can also improve the effectiveness of law enforcement.

This handbook provides a wide-ranging review of current efforts to reduce ethnic profiling and support non-discriminatory law enforcement. Its numerous case studies examine: non-discriminatory standards established in legal instruments and operational guidelines, research and monitoring methodologies, institutional practices that create non-discriminatory workplaces that reflect the societies they serve, and models of community outreach and engagement. The case studies and explanatory text aim to provide clear and practical support to all those seeking to understand the dynamics and reduce the frequency of ethnic profiling. Taken together, they offer a holistic approach to law enforcement that does not discriminate.

Beginning with a definition of ethnic profiling, this handbook examines the need for a holistic approach to reducing ethnic profiling, then looks at the legal standards and institutional policies for addressing ethnic profiling, as well as the oversight bodies and complaints mechanisms relevant to the issue. Subsequent chapters explore the use of ethnicity in data gathering by law enforcement, strategies for reducing disproportionality and improving the quality of contacts between police and community members, and

the importance of training, reforming institutional cultures, and community outreach in reducing ethnic profiling. The book concludes with annexes documenting relevant legal standards and case law and providing references for additional research.

This handbook includes nearly 100 brief case studies drawn from 19 European countries and the United States. They are intended as models for reform efforts, although it is important to bear in mind that any initiative to reduce ethnic profiling must be tailored to local circumstances. Each case study is introduced with brief text explaining its significance, and each section closes with bullet points summarizing key elements of the good practices represented in the case studies.

The handbook has been prepared to support national and local authorities and law enforcement agencies across the European Union as they take steps to monitor and reduce ethnic profiling. It is intended to help political authorities, oversight institutions, law enforcement entities, civil society organizations, and community representatives better understand the dynamics and costs of ethnic profiling, and aid them in developing new partnerships, policies, and practices to address the problem. While this handbook focuses on European Union legal standards and law enforcement practices, it has broader relevance for any setting in which ethnic profiling has been identified as an issue to be addressed.

The practices and policies set out in this handbook are not mutually exclusive, but rather are meant to complement each other and add up to a holistic approach to reducing ethnic profiling. In most settings, the best approach will be identified through engagement and dialogue with the diverse communities that are affected by ethnic profiling: ethnic minority groups, law enforcement institutions and officers, and legal and political authorities.

Encouragingly, the experiences gathered in this handbook demonstrate that there is increasing recognition of the challenges of enforcing the law in racially and ethnically diverse communities, and of the need to incorporate non-discrimination principles directly and explicitly into law enforcement policy and practice. Efforts to address ethnic profiling can not only reduce discriminatory practices and outcomes, but can also enhance the overall quality and efficiency of law enforcement.

I. Ethnic Profiling Defined

A Comprehensive Definition of Ethnic Profiling

Ethnic profiling is the use by police of generalizations based on race, ethnicity, religion or national origin—rather than individual behavior or objective evidence—as the basis for law enforcement actions.¹ Ethnic profiling undermines a basic precept of the rule of law: that all persons deserve equal treatment under the law and that individual behavior should be the basis of legal liability. Ethnic profiling targets certain persons because of what they look like and not what they have done.

Ethnic profiling should not be confused with “criminal profiling,” which relies on statistical categorizations thought to correlate with specific behaviors, resulting in the development of profiles for serial killers, hijackers, and drug couriers. Nor should ethnic profiling be conflated with individual “suspect profiles” or suspect descriptions, generally based on a witness description of a specific person connected with a particular crime committed at a specific time and place.² If a robbery victim reports that her assailant was a tall blond man, it is reasonable for police to stop tall blond men in the area, based on this suspect description. However, if a police officer stops every Roma person he sees because of his personal conviction that Roma are likely to commit crime, this is ethnic profiling.

As in the example above, ethnic profiling frequently results from decisions by individual officers. Some of these officers may be explicitly racist, while others may be unaware of the degree to which generalizations and ethnic stereotypes drive their subjective decision-making about which individuals to subject to law enforcement action. While racist individuals in law-enforcement institutions certainly contribute to ethnic profiling,³ ethnic profiling remains persistent and pervasive precisely because it is the

result of a habitual, and often subconscious, use of widely-accepted negative stereotypes in making decisions about who appears suspicious.⁴

Ethnic profiling may also result from institutional policies targeting certain forms of crime and/or certain geographic areas without consideration of the disproportionate impact such policies and resource allocation have on minority communities. Policy decisions of this sort often reflect larger public and political concerns and, in some cases, public prejudices. However, they can also arise from the institutional culture of law enforcement organizations as a whole, which build up a tradition of policing in certain ways, especially in relation to particular localities or groups within their areas.

This handbook defines ethnic profiling as encompassing situations where ethnicity, race, national origin, or religion is a significant—even if not the exclusive—basis for making law enforcement decisions. Ethnic profiling can also include situations where law enforcement policies and practices—although not defined by reference to ethnicity, race, national origin, or religion—nevertheless have a disproportionate impact on specific groups and where this disproportionate impact cannot be justified in terms of legitimate law enforcement objectives. In European law, the fact that discriminatory outcomes may occur in the absence of discriminatory intent is recognized in the concept of “indirect discrimination” established in the European Racial Equality Directive (see further discussion of legal standards below).

British and American definitions of ethnic profiling recognize that it can be either deliberate or indirect. The 2003 guidance on racial profiling issued by the United States Department of Justice states that:

In making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, Federal law enforcement officers may not use race or ethnicity to any degree, except that officers may rely on race and ethnicity in a specific suspect description. [...] In conducting activities in connection with a specific investigation, Federal law enforcement officers may consider race and ethnicity only to the extent that there is trustworthy information, relevant to the locality or timeframe, that links persons of a particular race or ethnicity to an identified criminal incident, scheme, or organization. This standard applies even where the use of race or ethnicity might otherwise be lawful.⁵

In the United Kingdom, the 1984 Police and Criminal Evidence Act (PACE) expressly addressed ethnic profiling by establishing that the reasonable suspicion behind a stop and search “cannot be based on generalizations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity.”⁶

While European law has yet to codify a single definition of ethnic profiling, several different definitions have been proposed by European bodies and civil society actors. The Council of Europe’s European Commission against Racism and Intolerance (ECRI) has defined ethnic profiling as

The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin, in control, surveillance or investigation activities.⁷

The European Union Network of Independent Experts on Fundamental Rights, in turn, has defined it as

[T]he practice of using ‘race’ or ethnic origin, religion, or national origin, as either the sole factor, or one of several factors in law enforcement decisions, on a systematic basis, whether or not concerned individuals are identified by automatic means.⁸

The European Union Fundamental Rights Agency (FRA) uses the term “discriminatory ethnic profiling” in its definition, stating that discriminatory ethnic profiling involves “treating an individual less favorably than others who are in a similar situation (in other words, ‘discriminating’), for example, by exercising police powers such as stop and search.” According to the FRA, ethnic profiling is present “[w]here a decision to exercise police powers is based only or mainly on that person’s race, ethnicity or religion.”⁹

The FRA’s approach reflects a conceptual and semantic confusion that continues to dog the European Union’s discussions of ethnic profiling. The use of the term “*discriminatory* ethnic profiling” implies that there can be ethnic profiling that is not discriminatory. But “ethnic profiling” refers specifically to a form of discrimination in law enforcement; to add the adjective “discriminatory” to the term misleadingly suggests that there may be non-discriminatory ethnic profiling. This confusion reflects a conflation of “ethnic profiling,” which refers to discriminatory practices or outcomes in law enforcement, and “criminal profiling,” which describes an investigative technique that relies on statistical inferences to detect persons involved in crime and which may or may not include sensitive personal data such as race, ethnicity, religion, or national origin.

Further definitional confusion arises from efforts by the Council of Europe and European Union to update personal data protection standards in response to new data mining techniques enabled by rapid technological advances. A 2010 recommendation of the Council of Europe defines profiling as: “an automatic data processing technique that consists of applying a ‘profile’ to an individual, particularly in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes.”¹⁰ Ethnic profiling may constitute a subset of profiling in the context of data mining. However, whether the law enforcement activity in question is an identity check on the street or an algorithm-based search of databases, when these actions use ethnicity, religion, or race (or proxies for them) rather than suspicious behavior, they constitute ethnic profiling and are an unlawful form of discrimination. Law enforcement’s use of data mining to conduct ethnic profiling is of particular

concern in the context of counter-terrorism, as law enforcement agencies have developed a new interest on the potential of data mining as a counter-terrorism tool.

The Council of Europe's definition of data mining seeks to position profiling as a neutral process of investigation, and ignores the risks of discrimination inherent in generalizing about whole groups of people. It fails to establish ethnic profiling as a specific term referring to a discriminatory law enforcement practice.

Data mining and other forms of criminal profiling may cull personal data and at times sensitive personal data on ethnicity, religion, national origin, and other elements for investigative purposes. Where there is a basis in specific and timely intelligence, such as a victim or witness description or reliable and timely intelligence that includes ethnic appearance or national origin, such use of sensitive personal data may be necessary and proportional and would not constitute ethnic profiling. But when the use of sensitive personal data reflects stereotypes or generalizations that connect basic personal characteristics (such as being a Muslim, from certain countries, male and between the age of 16 and 30) with a propensity to offend, it crosses the boundary into ethnic profiling.

Strategies to prevent terrorism can also raise concerns about ethnic profiling. One counter-terrorism tactic that merits particular mention is "counter-radicalization" or the attempt to identify individuals thought to be at risk of sympathizing with or turning toward terrorism. In seeking to identify persons in early stages of sympathy for terrorism, some counter-radicalization approaches focus on beliefs rather than actions.

Counter-radicalization strategies often rest on broad generalizations about religious practice, with police and intelligence services targeting practitioners of certain tenets of Islam (such as Salafism or Wahhabism) even without concrete evidence of the practitioners' involvement in terrorist activities. In this approach, the distinction between an orthodox or "fundamentalist" practice of Islam and willingness to participate in terrorist acts can be blurred. Followers of certain forms of Islam have been labeled as "radical"—even if they do not promote violence—based on the nature of their religious belief. These assumptions have been criticized in numerous studies that find no consistent path to radicalization¹¹ and no connection between Muslim religious views and political radicalization.¹² In fact, a study by the British intelligence services noted that adherence to non-violent orthodox or "fundamentalist" streams of Islam may militate against violent radicalization and that such groups can be important allies in "de-radicalization."¹³

Immigration enforcement is another law enforcement context in which the use of physical appearance, including ethnicity, is common—in this case, to determine who may be an undocumented foreigner. In August 2010, the French Ministry of the Interior issued an internal circular tasking police to round-up persons who appeared to be Roma immigrants and deport them to Romania.¹⁴ The targeting of individuals based

explicitly on their membership in a minority group constitutes illegal discrimination.¹⁵ Other immigration enforcement practices, such as giving police quotas of how many undocumented migrants to identify and detain for deportation, have not garnered as much international attention as the expulsions of Roma, but clearly drive the use of highly discriminatory mass identity checks and raids targeting minority neighborhoods.

In an increasingly multi-ethnic Europe, using ethnic profiling to control immigration imposes an undue burden on minority citizens: law enforcement continues to use ethnicity as a proxy for immigration status even when those being targeted were born in European countries or have been legally resident there for years. This creates a dual standard in the enjoyment of basic citizenship rights that violates the principle of equal treatment: those who “look European” do not get stopped and asked for identity papers, while those who “look like foreigners” bear the burden of disproportionate police attention.¹⁶

In practice, it is best to apply a strict standard and avoid the use of sensitive personal factors such as ethnicity, religion, and national origin except in those cases where it is part of a reliable individual suspect description. According to the EU Network on Independent Experts on Fundamental Rights:

[T]he consequences of treating individuals similarly situated differently according to their supposed ‘race’ or to their ethnicity has so far-reaching consequences in creating divisiveness and resentment, in feeding into stereotypes, and in leading to the over-criminalization of certain categories of person in turn reinforcing such stereotypical associations between crime and ethnicity, that differential treatment on this ground should in principle be considered unlawful under any circumstance.¹⁷

To summarize, ethnic profiling:

- Is a form of discrimination;
- Refers specifically to law enforcement practices, including those of the police, intelligence officials, border guards, immigration and customs authorities;
- Is not limited to the explicit or sole use of ethnicity;
- Can result from explicit targeting of minorities in certain law enforcement actions such as stop and search and immigration enforcement;
- Can result from racist acts of individuals law enforcement officers, but is most commonly the result of reliance on widely-held stereotypes about the relationship between crime and ethnicity;
- Can result from management and operational decisions which target specific crimes or specific neighborhoods without considering the potentially disproportionate impact of these strategies on ethnic minorities.

Ethnic Profiling as a Prohibited Form of Discrimination

Ethnic profiling is clearly prohibited under European and international law.

Both the United Nations Committee on the Elimination of Racial Discrimination (CERD) and the Council of Europe European Commission against Racism and Intolerance (ECRI) have made clear that ethnic profiling violates the prohibition against discrimination. In 1994, CERD raised a concern regarding the need “to ensure that preventive identity checks were not being carried out in a discriminatory manner by the police.”¹⁸ ECRI’s General Policy Recommendation No. 11 defines ethnic profiling and calls on states to “ensure that legislation prohibiting direct and indirect racial discrimination cover the activities of the police.”¹⁹ The FRA has likewise noted that “[a]ny form of ethnic profiling is likely to be illegal also in terms of international law because it infringes the guarantees of the International Convention on the Elimination of all Forms of Racial Discrimination,” to which all EU member states are bound.²⁰

These declarations are consistent with European and international jurisprudence interpreting the prohibitions against racial discrimination in Article 1 of International Convention on the Elimination of Racism and Discrimination (ICERD)²¹ and Article 14 of the European Convention on Human Rights.²²

Under the governing case law of the European Court of Human Rights (ECtHR), the test for discrimination is two-fold: (i) whether there has been a difference of treatment such that persons of another ethnic, racial, or religious group in “relevantly similar” situations are treated differently; and (ii) whether the difference in treatment has an objective and reasonable justification when “assessed in relation to the aim and effects” of the measure at issue.²³ In its leading judgment on this topic, the ECtHR found a breach of the European Convention on Human Rights where Russian police officers, acting pursuant to an official policy of ethnic exclusion, barred a man from crossing an internal administrative boundary because of his Chechen ethnicity. The court held that “no difference in treatment which was based *exclusively or to a decisive extent* on a person’s ethnic origin was capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.”²⁴

In June 2009, the United Nations Human Rights Committee ruled in the case of *Rosalind Williams Lecraft v. Spain*, finding that she had been singled out by Spanish police for an identity check solely on the ground of her racial characteristics and that, in making these characteristics the decisive factor in her being suspected of unlawful conduct, Spain was in violation of the International Covenant on Civil and Political Rights.²⁵ The committee ruled that immigration checks should not be carried out in such a way as to target only persons with specific physical or ethnic characteristics, and that while the conduct of identity checks in immigration control serves a legitimate purpose, “when the authorities carry out such checks, the physical or ethnic characteristics

of the persons subjected thereto should not by themselves be deemed indicative of their possible illegal presence in the country.”²⁶

The ECtHR has made clear that a difference in treatment must not only pursue a legitimate aim—it must also obey a reasonable relationship of proportionality between the means employed and the aim sought to be realized.²⁷ Ethnic profiling by law enforcement officers is unlawful unless it meets these criteria establishing the validity of differential treatment.

The ECtHR has ruled that police powers of stop and search must be clear, used accountably, and respect privacy rights. In the landmark *Gillan and Quinton v. the United Kingdom* case, the court found that the British law which granted police broad powers to stop and search persons without any requirement of reasonable suspicion was unlawful. The court’s January 2010 decision noted that “the powers of authorisation and confirmation as well as those of stop and search under sections 44 and 45 of the 2000 [United Kingdom Prevention of Terrorism] Act are neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse. They are not, therefore, ‘in accordance with the law’.”²⁸ The court noted the clear risk of arbitrariness in the grant of such a broad discretion to the police officer,²⁹ as well as the risks of discriminatory use of such powers, given statistics showing that black and Asian persons are disproportionately affected by the powers.³⁰

In the realm of border control, the European Commission’s *Practical Handbook for Border Guards (Schengen Handbook)* enshrines non-discrimination principles as follows:

Fundamental Rights enshrined in the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union must be guaranteed to any person seeking to cross borders. Border control must notably fully comply with the prohibition on inhuman and degrading treatments and the prohibition of discrimination enshrined, respectively, in Articles 3 and 14 of the European Convention on Human Rights and in Articles 4 and 21 of the Charter of Fundamental Rights of the European Union.

In particular, border guards must, in the performance of their duties, fully respect human dignity and must not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Any measures taken in the performance of their duties must be proportionate to the objectives pursued by such measures.

All travelers have the right to be informed of the nature of the controls and to a professional, friendly and courteous treatment, in accordance with applicable international, community and national law.³¹

The United Nations Committee on the Elimination of Racial Discrimination (CERD) has emphasized that the prohibition against racial discrimination is a peremptory and non-derogable norm, and that states must ensure that counter-terrorism

programs do “not discriminate in purpose or effect on grounds of race, colour, descent or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping.”³² Similarly, ECRI’s General Policy Recommendation No. 8 on combating racism while fighting terrorism specifically recommends that governments pay particular attention to ensuring that no discrimination ensues from legislation and regulations—or their implementation—governing checks carried out by law enforcement officials within the countries and by border control personnel.³³

The Impact of Ethnic Profiling on Individuals, Communities, and Law Enforcement

Ethnic profiling, whether deliberate or unintended, has direct and harmful consequences for individuals and communities. It also has a negative effect on the law enforcement agencies and agents that engage in it.

The impact of ethnic profiling on individuals

For individual victims of ethnic profiling, the experience has been described as “frightening, humiliating or even traumatic.”³⁴ Mental health professionals have linked it to “post-traumatic stress disorder and other forms of stress-related disorders, perceptions of race-related threats, and failure to use available community resources.”³⁵

Ethnic minorities across Europe are clearly suffering from the negative effects of ethnic profiling. In Spain, a young male immigrant told researchers “I worry when I go on the street that they will stop me and they ask me for my papers, because of the color of my skin, by my way of walking.”³⁶ Another victim of ethnic profiling in Spain added that “the police always come and in the end the kid thinks that he is guilty. They feel bad, they feel insecure, they feel like criminals and they feel that they are bad.”³⁷

Minority youth in France likewise experience police controls as arbitrary and publicly humiliating. They describe interactions that often involve rough treatment at the hands of the police, such as being pushed against a wall or being made to lie on the ground. In their words, “[p]olice controls make life impossible for any foreigner in the country without papers, or anyone who is too black, too Arab, too tan, too stereotype, too young, too poor.”³⁸

Beyond feelings of persecution, ethnic profiling involves widespread violations of important fundamental rights, including freedom of movement, freedom of religion, the right to assembly, the right to privacy, and the right to non-discrimination. These violations are manifested through wrongful searches, arrests, convictions, and deportations.

The impact of ethnic profiling on communities

The assumption that an ethnic or national identity, or a religion, directly correlates with criminality grossly stigmatizes entire groups of people. Such stigmatization has concrete effects on minority communities: it perpetuates negative stereotypes, legitimizes racism, leaves members of those communities less likely to cooperate with police, and contributes to the overrepresentation of ethnic minorities in the criminal justice system.

University of Chicago Professor Bernard Harcourt has described a “ratchet effect,” in which disproportionate law enforcement attention on specific communities leads to increased criminal justice contacts and arrests among members of those communities. Those communities become over-represented in the criminal justice system, feeding a public perception of higher criminality among members of those communities, and this perception leads to increased law enforcement attention on the communities in question, completing the vicious cycle. In the United States, the ratchet effect has contributed to belief in the stereotype of “black criminality” among police officers and the general public, undermining the ability of African-Americans to obtain employment or pursue educational opportunities.

Ethnic profiling delegitimizes the criminal justice system in the eyes of those affected, pushing them away from cooperation with law enforcement and perhaps even encouraging disaffected youth to commit crime. Ethnic profiling can corrode police-community relations, hampering law enforcement efforts to combat crime by alienating whole segments of society.³⁹ The effect of ethnic profiling can be seen in the European Union, most clearly in studies of sentencing disparities and the over-representation of ethnic minorities in European prison populations.⁴⁰

Ethnic profiling by police can reflect prejudices within a society, but ethnic profiling and its effects can also feed biases in the broader society. Law enforcement’s stigmatization of particular communities as more likely to commit crimes contributes to stereotypes about ethnic minority groups, signaling to the broader society that all members of that group constitute a threat. If the police, guided by prejudices, can act in a discriminatory manner, why should the shop-keeper, restaurant owner, or airline steward not do likewise?

Unchecked and widespread profiling has also contributed directly to civil unrest, as was the case in 1981 in the Brixton area of London and in other British cities. The Brixton riots in particular were described as “an outburst of anger and resentment by young black people against the police” following an aggressive police operation that involved large-scale stops and searches of young, black men.⁴¹ Similar dynamics were at play in the French riots of 2005,⁴² which were triggered by the accidental death of two minority youths who were avoiding a police identity check. In February 2008, the Nørrebro district of Copenhagen, Denmark erupted following the alleged mistreatment

by Danish police of an elderly man of Palestinian origin who was trying to prevent the police from stopping and searching another individual.⁴³ Danish media reports and civil society activists attributed the civil unrest to the routine use of stop-and-search in minority areas.⁴⁴

Another adverse effect of ethnic profiling is increased levels of hostility in encounters between individuals and law enforcement officers. Greater hostility increases the chances that routine encounters will escalate into aggression and conflict, posing safety concerns for officers and community members alike.⁴⁵

HIT RATES

The “hit rate” is the proportion of identity checks or stops and searches that result in formal law enforcement action, such as an arrest or summons for an infringement.

DISPROPORTIONALITY

“Disproportionality” in stops refers to the extent to which stop powers are being used on different ethnic or nationality groups in proportion to their prevalence in the wider society. Odds-ratios, which compare measure the odds of being stopped if you are an ethnic minority and the odds of being stopped if you are a non-minority, are one way of measuring disproportionality. Odds ratios under 1.5 indicate an absence of ethnic profiling; odds ratios between 1.5 and 2.0 indicate that a bias might exist; and odds-ratios above 2.0 indicate that police are targeting ethnic minorities for stops.

The impact of ethnic profiling on law enforcement

Ethnic profiling has a direct and deleterious effect on law enforcement. It reduces security because it does not work, it misdirects police resources, and it alienates people whose cooperation is necessary for effective crime detection.

When accused of engaging in ethnic profiling, law enforcement officials often respond that they are simply reacting to higher crime and offending rates in ethnic minority communities, and that by targeting these persons, places, and offenses, they are engaging in “good policing.” In other words, they argue that ethnic profiling works.

In practice, however, there is little evidence that profiling is an effective approach to combating crime. Studies find that stereotypes appear to have greater influence than crime data in driving officers’ discretionary decisions. In the UK, self-report surveys find that black and white people report equal levels of drug use. Yet police data show that black people are stopped by police more frequently than white people for drug offenses.⁴⁶

In fact, when police treat an entire group of people as suspicious, they are more likely to miss dangerous persons who do not fit the profile. Ethnic profiling can be both over-inclusive and under-inclusive. It is over-inclusive in that most

of the ethnic minorities disproportionately targeted for law enforcement operations are innocent of the suspected crime or infraction. It is under-inclusive in that there may be criminals who do not fit the profile and can therefore escape attention.

Research from the United Kingdom indicates that where levels of police officer discretion are high—that is, where officers have greater freedom to stop whoever they want—generalizations and negative stereotypes about “likely” offenders play an important role in the officers’ decisions.⁴⁷ However, when officers are required to justify or articulate grounds for suspicion before stopping citizens, the officers become less likely to use generalizations about race, ethnicity, or religion. Instead, the officers focus on behavioral factors rather than appearance. This shift from noting superficial appearance to examining individual behavior increases the rate at which law enforcement stops produce positive results—known as a “hit rate.”⁴⁸

Studies have confirmed that reliance on ethnic profiling reduces hit rates, undermining law enforcement efficiency.⁴⁹ A 2005 study of the efficiency of preventive searches for weapons in eight Dutch cities found that the searches disproportionately targeted minorities and that the hit rate was only 2.5 percent: for every 1,000 people searched, only 25 weapons were detected.⁵⁰ Not only is this a low hit rate, but the cost in terms of police officer-hours was extremely high—54 operations in Amsterdam took nearly 12,000 hours of police time; resource costs were similarly high for equally limited results in Rotterdam.⁵¹

Clearly, ethnic profiling undermines effective policing by misdirecting scarce law enforcement resources. But it also undermines policing by alienating individuals and whole communities who might otherwise be an asset to law enforcement. Policing is profoundly dependent on the cooperation of the general public: law enforcement needs the public to report crimes and provide suspect descriptions and witness testimony. British and American research shows that unsatisfactory contacts with law enforcement can have a negative impact on public confidence in law enforcement, not only for the individual directly involved, but also for his family, friends, and associates.⁵² Research also demonstrates that mistreatment by law enforcement officers is associated with reduced public cooperation with the law enforcement.⁵³ And without the public’s cooperation, law enforcement becomes much more difficult: A study in the United Kingdom found that only 15 percent of crimes solved were attributable to the police acting on their own,⁵⁴ and the number of crimes solved using only forensic evidence was under five percent.⁵⁵

In addition to being discriminatory, ethnic profiling is ineffective, inefficient, and alienating. It causes direct harm to the people and communities who are profiled, and also harms law enforcement by rendering it less effective. And it does indirect damage to society at large, which is left with reinforced stereotypes and less security as a result of wasted police resources.

However, as this handbook seeks to demonstrate, better alternatives to ethnic profiling exist. For example, there is evidence that removing ethnicity from a criminal profile and obliging officers to focus on specified non-ethnic criteria can help avoid discrimination and improve efficiency. A 1998 initiative undertaken by the United States Customs Service showed that basing searches on behavioural indicators and requiring supervisor authorization ended racial disparities, and more than doubled the hit rate (discussed in case study in Chapter 6). These and other examples explored in the following chapters show that it is possible to reduce ethnic profiling and replace it with more efficient and effective—and less biased—practices.

II. A Holistic Approach to Reducing Ethnic Profiling

Given its negative effects on individuals, ethnic minority communities, and law enforcement efficacy, ethnic profiling should be addressed, ameliorated, and ultimately eradicated. In order to do so, political leaders and senior law enforcement management must first recognize that ethnic profiling may be a problem. The next step is to examine the specific dynamics that produce unjustified and disproportionate focus on ethnic minorities in law enforcement actions. Finally, law enforcement agencies must introduce and implement new management and operational practices.

Recognition of ethnic profiling as a problem often emerges in the aftermath of civic unrest and deteriorating relations between law enforcement and ethnic minority communities, as happened in the United Kingdom following the 1981 Brixton riots. A commitment to study and address ethnic profiling can also follow the implementation of new anti-discrimination laws and the establishment of national equality policies which affect the work of law enforcement institutions. Law enforcement agencies themselves can also choose to proactively reach out to ethnic minority communities and adopt more equitable policies and practices. Proactive efforts can include increasing ethnic, racial, and religious diversity within the police itself by recruiting minorities into law enforcement, and building supportive relations with ethnic minority and immigrant communities.

Once ethnic profiling has been recognized as a potential problem, law enforcement authorities can institute a number of corrective policies and practices. Actors at every level of the problem— from European Union officials to national and local political leaders; officials of equality, anti-discrimination or complaints-handling organizations;

law enforcement leaders and managers, supervisory or operational officers; non-governmental organizations and pressure groups; lawyers and academics; and ethnic minority leaders and community organizations—have a vital role to play in undertaking change.

This handbook recommends a comprehensive approach to addressing ethnic profiling—an approach that seeks to understand all the dimensions of the problem and to develop both general and targeted responses. A holistic approach to addressing ethnic profiling will be articulated through national legislation, standards, and strategies or plans that provide a high level of visibility and a clear demonstration of political commitment to reduce ethnic profiling, as well as laying out specific actions to be taken at more local levels. In a holistic approach, each element reinforces the others and a consistent message is sent to all members of the law enforcement institution, to specific communities, and to the larger public.

Important elements of a holistic approach include:

- Reviewing legal standards, operational and institutional practices that contribute to or permit profiling and amending them to create clear standards and safeguards;
- Instituting systems to monitor law enforcement practices to detect profiling;
- Building policing skills and capacity to operate without profiling;
- Initiating recruitment drives to create diverse law enforcement agencies that represent all communities;
- Engaging with communities to identify and address local problems and build trust.

These approaches have the dual effect of increasing police efficacy and improving the quality of ethnic minorities' encounters with law enforcement.

In general, mechanisms to address ethnic profiling, like other police accountability mechanisms, function at three distinct levels: legal and political, institutional and managerial, and community-based. These three levels correspond to the different stakeholders in law enforcement.⁵⁶

Law enforcement agencies are accountable to legal standards. They are also accountable to national—and in many cases, local—political authorities for their legal powers, for policy direction, and for their budgets.

Law enforcement agencies have institutional mechanisms for managerial and administrative accountability that govern officers' encounters with civilians. These are often the most powerful instruments in changing the daily behavior of law enforcement personnel.⁵⁷

Law enforcement agencies are accountable to the communities that they serve. Accountability has taken on greater weight in contemporary policing approaches, based on a philosophy of community policing and on studies demonstrating the vital importance of community trust and cooperation to police legitimacy and efficiency.

Approaches to reducing ethnic profiling fall within these three broad areas of accountability:

Practices in Combating Ethnic Profiling

Forms of accountability	Chapter of this book	Practices to combat ethnic profiling
Legal and political	III	National legal standards, operational guidance and strategic action plans
	IV	Oversight bodies and complaints mechanisms
Managerial and administrative	V	Ethnic monitoring and data gathering
	VI	Reducing ethnic disproportionality in, and improving quality of, law enforcement–civilian encounters
	VII	Training
	VIII	Policy audits and reviews
Community	IX	Community outreach and engagement

Ethnic profiling is not an easy issue to address at any of these levels. For political leaders and law enforcement officials, efforts to study and ameliorate ethnic profiling are often viewed as attempts to undermine law and order or stymie counter-terrorism efforts. They are also perceived as an accusation that all law enforcement officers—and even whole institutions—are racist. Oversight bodies and equality institutions interested in studying the dynamics of ethnic profiling must deal with the difficulty of obtaining data from often closed and self-protective law enforcement agencies. For persons and communities of minority ethnic origin, it may mean grappling with stereotypes about offending and confronting accusations that immigrants and minorities are responsible for a great deal of crime.

These are serious challenges that have stymied many attempts to get to grips with ethnic profiling. Nonetheless, they can be and have been overcome. This handbook highlights the innovative partnerships and practices that can successfully address ethnic profiling and improve the quality and productivity of law enforcement operations.

While a holistic approach is preferred, it is not always possible in practice. The inability to implement a holistic approach should not preclude the adoption of other more targeted or localized measures to address ethnic profiling. The ultimate goal of such a step-by-step process should remain to develop an approach that enables

The role of ethnic minority communities in addressing ethnic profiling

- Campaign for stronger and more explicit legislative and operational standards that specifically address ethnic profiling.
- Raise complaints about specific ethnic profiling practices before relevant oversight and monitoring bodies.
- Engage with national and local policy forums to examine data on the disproportionate impact of law enforcement practices.
- Participate in training programs for law enforcement officers.
- Contribute to law enforcement policy audits and reviews.

ethnic profiling to be addressed throughout the law enforcement organization in everyday operational practice and policy.

This handbook represents the most comprehensive review of current efforts to address ethnic profiling and create guarantees of non-discriminatory policing in the European Union. The different measures set out here are not alternative campaigns but rather complementary approaches. As the case studies exemplify, there are wide-ranging possibilities for creative solutions and these most frequently emerge from frank engagement and dialogue with Europe's many diverse communities.

We describe these efforts as “good practices” rather than “best practices” for two reasons. First, what works in one place may not in another: a single approach is rarely the best option across all circumstances given variations in local realities. Second, relatively few of the case studies presented in this handbook have been subject to systematic review and evaluation. Where they have been assessed, the evaluation and its results are noted in the text. In light of these considerations, it is preferable to view the case studies presented here as “promising” or “good” rather than “best” practices.

While most of the case studies focus on good and promising practices, many include a consideration of the challenges and difficulties that were confronted. A small number of case studies also offer examples of approaches to avoid. Identifying the lessons of failures helps to avoid repeating mistakes.

Each section follows the same structure: a definition and schematic review of the key issues, followed by case studies and a summary of the basic principles of good practice.

III. Legal Standards and Institutional Policies to Address Ethnic Profiling

Legal Standards Defining and Prohibiting Ethnic Profiling

A clear legal standard defining and prohibiting ethnic profiling is the best expression of a society's rejection of this discriminatory practice. But such standards remain rare in European member states, despite the existence of an array of non-discrimination norms and provisions. This chapter reviews legal standards and practical guidance on ethnic profiling; the final section specifically discusses profiling driven by immigration enforcement practices, and the limits of permissible differential treatment based on nationality.

Laws governing law enforcement institutions and their powers should, but do not always, include clear prohibitions of discrimination. Where law provides basic principles, it is important that the implementing regulations or guidelines elaborate in detail on the permissible and non-permissible uses of race, ethnicity, and religion by law enforcement. It is also important that laws establish effective remedies for victims of ethnic profiling through criminal, but also civil and administrative recourse.

The European Network of Independent Experts in Fundamental Rights summarized the basic elements of a legal framework to assure adequate protection from ethnic profiling in the field of law enforcement as follows:

- clearly prohibit ethnic profiling, to the extent that indicators relating to ‘race,’ religion ethnicity or national origin, cannot be used as proxies for criminal behaviour, either in general or in the specific context of counter-terrorism strategies;
- facilitate the proof that such ethnic profiling is being practiced by law enforcement authorities by allowing the use of anonymous ethnic statistics to highlight the discriminatory attitudes of such authorities, insofar as this may be reconciled with the rules relating to the protection of private life in the processing of personal data;
- define with the greatest clarity possible the conditions under which law enforcement authorities may exercise their powers in areas such as identity checks or stop-and-search procedures;
- sanction any behaviour amounting to ethnic profiling not only through the use of criminal penalties, but also (or instead) through any other means, including by providing civil remedies to victims or by administrative or disciplinary sanctions, insofar as the rules relating to evidence in criminal proceedings may constitute an obstacle to effectively combating such behaviour and protecting the victims of the behaviour.⁵⁸

Constitutional non-discrimination protections need further codification of their specific applications to law enforcement in order to establish limits on police powers and remedies in the case of abuse. Yet, anti-discrimination laws do not always apply to policing agencies. For example, Germany’s General Equal Treatment Act, that country’s primary non-discrimination statute, does not apply to law enforcement.⁵⁹ Non-discrimination guarantees can also be established in laws setting out police powers to carry out identity checks, immigrations controls, searches, and other law enforcement functions.

Criminal and Administrative Legal Remedies

Litigation involving ethnic profiling remains rare in the EU beyond the United Kingdom. As noted above, it is important to provide criminal, civil, and administrative remedies for victims of ethnic profiling.

Criminal sanctions in anti-discrimination law should apply to law enforcement agencies and officers. This signals the seriousness and impermissible nature of discrimination by law enforcement. In reality such provisions will be used only rarely because in order to prosecute someone under criminal provisions, racist intent must be established and a high standard of proof must be met. Ethnic profiling is often an outcome not of deliberately racist behavior but rather of established police practice, and criminal legal recourse is not an effective remedy for such patterns of practice.

Civil and administrative law provide a more effective legal framework for addressing ethnic profiling. Legislation should provide remedies that are easily accessible to victims and enable them to prove ethnic profiling, including through: shifting the burden of proof to the law enforcement agencies themselves;⁶⁰ allowing “testing” cases⁶¹ and statistical evidence to be introduced as proof in courts of law; enabling organizations to bring cases on behalf of victims; and providing protection against any retaliatory measures for plaintiffs in ethnic profiling cases or people reporting or providing evidence of ethnic profiling.

Legislation can play an important role in bringing about the system-wide changes needed to recognize and eliminate ethnic profiling practices across law enforcement organizations. The examples from the United Kingdom and Northern Ireland below show how legislation can promote broad changes in institutions by imposing “positive duties” on law enforcement authorities.

The Equality Act 2010

The Equality Act 2010 unifies existing non-discrimination law under a single act, which establishes a legal framework to protect individual rights and advance equal opportunity.⁶² The act applies to all organizations providing a public service, including the Police Service, customs and excise officers, tax officers, trading standards and health and safety officers, licensing, the core functions of immigration authorities (see further below), and the Prisons and Probation Service.

The act protects against discrimination on the basis of “protected characteristics”:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

Those subject to the act must, in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

The bodies covered by the law are required to consider how they can advance equality and good relations. Equality considerations are to be reflected in policy design and service delivery—including internal policies—with regular review. The act also stipulates specific duties, including the publication of equality objectives and information, and monitoring of progress toward meeting those objectives.

The act provides individuals and groups with the means to take legal action against unlawful discrimination. The Equality and Human Rights Commission (formerly the Commission for Racial Equality) also has powers to conduct investigations, seek judicial review, and issue compliance orders where it believes a public body is not fulfilling either the general duty or its specific duties under the act.

Immigration

The Equality Act covers the United Kingdom Borders Agency (UKBA) but includes a limited exemption that allows certain immigration decisions (such as prioritizing arriving passengers for examination and removing persons who are in violation of immigration status or rules) on the grounds of nationality. The exemption is applicable only if specifically legislated or authorized by the Minister for Immigration.⁶³ The Risk Assessment Unit of the UKBA produces a quarterly list of nationalities which may be subjected to additional scrutiny. The nationalities covered by the authorization are reviewed quarterly by the UKBA and submitted for ministerial approval. The authorization sets criteria for inclusion on the nationality list, but these criteria include decisions made by immigration officials (such as visa refusals) which may themselves contain bias. The UK does not publish the list of nationalities.

NORTHERN IRELAND

Statutory Duty with Exemptions in Non-Discrimination Legislation

The Northern Ireland Act 1998 introduced a statutory duty on all public authorities to “have due regard to the need to promote equality of opportunity” in carrying out their functions and to “have regard to the desirability of promoting good relations” between certain individuals and groups, including persons of different racial origin and different religious beliefs.⁶⁴ The Police Service of Northern Ireland is obliged to fulfill these duties. However, law enforcement is explicitly exempted from other non-discrimination standards. The Race Relations (Northern Ireland) Order 1997 states that: “Nothing in Parts II to IV shall render unlawful an act done for the purpose of safeguarding national security or of protecting public safety or public order.”⁶⁵ Parts II to IV are those articles that effectively prohibit discriminatory acts.

The Race Relations (Amendment) Regulations (Northern Ireland) 2009 make clear that acts of Security Services and Secret Intelligence Services are exempt from the prohibition of discrimination.⁶⁶ Furthermore, the 2009 Regulations specifically exclude acts of discrimination on grounds of ethnic or national origin in carrying out of immigration functions.⁶⁷

These case studies give rise to the following general principles for all legal standards that seek to define and prohibit ethnic profiling:

- ▶ Non-discrimination obligations should cover all law enforcement officials, including policing anti-terrorism, customs and immigration functions.
- ▶ Laws and regulations governing the actions of all law enforcement officers must be in accordance with non-discrimination standards and must be consistent and coherent;
- ▶ An explicit prohibition of discrimination, covering both direct and indirect discrimination, should be included in all relevant legislation governing law enforcement interventions;
- ▶ Legislation should create positive obligations on law enforcement authorities to address discriminatory practices and ensure equal law enforcement outcomes;
- ▶ Legal standards should support judicial remedies and public reporting on steps taken to meet positive obligations to advance equal treatment.

Codes of Conduct

Legal prohibitions and requirements need to be supported by clear operational guidance on how to use law enforcement powers in a fair and neutral manner. Most importantly, guidance should explicitly prohibit the use of ethnicity, religion, and national origin in targeting persons for suspicion and include the requirement that law enforcement officers base their decisions on reasonable suspicion.

General principles of non-discrimination for law enforcement officers are often set out in codes of conduct. Breaches of these codes of conduct provide grounds for internal investigations and administrative discipline.

The French National Police Code of Conduct discussed below applies to immigration and anti-terrorism services as well as domestic police. The Northern Irish and Austrian codes set out similar standards. As noted in several of the case studies, codes of conduct are not always rigorously enforced. The failure to enforce non-discrimination standards set out in the organizations' own regulations sends a powerful and damaging message about institutional values.

Obligation of Non-Discrimination in the National Police Code of Conduct

The French National Police Code of Conduct prohibits discrimination and calls for polite and respectful treatment of the public. The code applies to all French law enforcement officials, including immigration and counter-terrorism functions. Article 7 states that:

[I]n the service of the public, police officials are to behave towards the public in an exemplary manner. They are to demonstrate an absolute respect of all persons, whatever their nationality or their origin, their social situation or their political, religious or philosophical beliefs.

Periodic written updates remind law enforcement officials of their non-discrimination obligation, but do not provide specific and practical guidance on proper conduct.

Article 6 of the Code of Conduct says that: “Failure to meet the obligations set out in this Code can result in disciplinary sanctions for officers, without prejudice, where relevant, to penal law sanctions.” Officers may be subject to internal administrative disciplinary procedures or judicial procedures. Individuals may also complain to the National Commission on Police Ethics (Commission Nationale de la Déontologie de la Sécurité or CNDS, an independent police complaints body which in 2011 was amalgamated into a national rights defenders’ office, described further in Chapter IV).

In 2009, the CNDS issued a decision highlighting the challenges of holding officers responsible for discriminatory identity checks. French police authorities stated that they could not identify the officers involved in a particular case involving charges of police discrimination, to which the CNDS responded that:

[I]t defies understanding that it should be so difficult to identify law enforcement officers when we know the time and place of their actions, yet there is no report made at the time the facts took place (as is usually the case where an identity check has no further follow up). This difficulty prevents all challenges. It also precludes measurement of the frequency of inappropriate practices, with the consequent risk that all officers are seen as behaving improperly when this may only be the case in isolated instances.⁶⁸

NORTHERN IRELAND

Police Code of Ethics

The Police Service of Northern Ireland Code of Ethics is regularly reviewed and updated. Article 6 of the 2008 Code states that:

Police officers shall act with fairness, self-control, tolerance and impartiality when carrying out their duties. They shall use appropriate language and behaviour in their dealings with members of the public, groups from within the public and their colleagues. They shall give equal respect to all individuals and their traditions, beliefs and lifestyles provided that such are compatible with the rule of law.

In carrying out their duties police officers shall treat all persons or classes of persons equally regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority, disability, age, sexual orientation, marital or family status, property, birth or any other status. Any difference in treatment shall be required to be justified and proportionate.

Breaches of the code may result in a criminal or disciplinary investigation, either by the Office of the Police Ombudsman or by the Police Service.⁶⁹ In practice, however, several high profile cases of blatant breaches of the Code of Conduct have not resulted in disciplinary action.⁷⁰ (As noted above, this code does not apply to security and intelligence services.)

AUSTRIA

Legal Guidelines on Non-Discriminatory Conduct

The Austrian Security Police Law states that officers of public security services "... shall refrain from any conduct that may create the impression of prejudice or which could be perceived as discrimination on account of gender, race or skin color, national or ethnic origin, religion, belief, political opinion or sexual orientation."⁷¹ The emphasis on actions that could be perceived as discriminatory establishes an obligation on police services to avoid giving any impression of discrimination in their conduct.

The Police Law does not offer practical guidance on the proper conduct of law enforcement actions and how to avoid creating the impression of prejudice or discrimination. The guidelines do provide for redress through the Independent Administrative Tribunal, but the process is reportedly cumbersome and expensive, and does not result in disciplinary measures, only a finding on whether or not a violation has occurred.

General principles of good practice for police codes of conduct:

- ▶ Codes of conduct should set out clear non-discrimination values and standards.
- ▶ Codes of conduct should provide practical standards specifically tailored to law enforcement.
- ▶ Copies of codes of conduct should be distributed to all law enforcement officers, and training on the code should be provided both in basic academy training but also in ongoing in-service training.
- ▶ Codes of conduct should be enforced, most importantly by the law enforcement managers and supervisors whose actions or inaction send a powerful message about organizational values, but also by external oversight mechanisms (see Chapter IV below).

Operational Guidelines on Thresholds for Action and Other Practical Guidance

Many EU member states give their law enforcement agencies broad powers to stop and search people without requiring that they have some reason to suspect the person of unlawful activities (also known as the reasonable suspicion standard). Few countries have specific operational guidance addressing the validity (or lack thereof) of using ethnicity, race, national origin, or religion as grounds for suspicion. Requiring that officers have grounds for reasonable suspicion based on a person's behavior rather than their appearance is a fundamental safeguard against ethnic profiling. Data from the United Kingdom show that when officers are allowed more discretion to stop and search people, disproportionality increases and effectiveness decreases.⁷² That is, the more license officers have to stop whoever they want, the more likely they are to fall back on prejudices and stereotypes, leading to more ethnic profiling and more fruitless stops.

The requirement of reasonable suspicion is established in European norms of law enforcement. The European Code of Police Ethics declares that “police investigations shall, as a minimum, be based upon reasonable suspicion of an actual or possible offence or crime.”⁷³ The European Court of Human Rights has established that “suspicion must be based on reasonable grounds that form an essential part of the safeguard against arbitrary arrest and detention. The fact that a suspicion is held in good faith is insufficient. The words ‘reasonable suspicion’ imply the ‘existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offense.’”⁷⁴

The EU Network of Independent Experts on Fundamental Rights has raised concerns about the lawfulness of broad police powers in many EU member states, recognizing that the wide discretionary powers of the police in stop and search procedures and the absence of any monitoring of the behavior of the police are problematic, as they “create a sense of impunity within the police and of powerlessness—but also resentment—among the targeted minorities.”⁷⁵

This concern was recently echoed by the European Court of Human Rights, which found in the *Gillan and Quinton v. the United Kingdom* case that the legal powers under which police are entitled to stop and search a person—including for counter-terrorism purposes—must be sufficiently circumscribed and subject to adequate legal safeguards against abuse. The judgment noted the “clear risk of arbitrariness in the grant of such a broad discretion to the police officer” and flagged the risk that such discretion would yield discriminatory patterns in police stops.⁷⁶

It is important for all law enforcement agencies to provide thorough guidance and training on what factors legitimately constitute reasonable suspicion. Across varied setting, many officers have trouble specifying their reasons for suspicion, or rely on rote and sometimes invalid grounds. A 2008 project monitoring police stops in Bulgaria, Hungary, and Spain found that officers had great difficulty articulating their reasons for stopping people.⁷⁷ A 2010 analysis of six years of New York Police Department stop data found that nearly half of the documented stops were justified on grounds of “furtive movements.”⁷⁸ Furthermore, in more than half of stops, the NYPD officers cited “high crime area” as an additional circumstance—including in areas with lower than average crime rates. A British study found that officers frequently fail to meet the threshold of reasonable suspicion; tend to focus on persons who have had previous contact with the police; or base their stops on generalizations about people, places, or situations associated with offending.⁷⁹

The following case studies set out guidance provided by the UK Police and Criminal Evidence Act (PACE) 1984—probably the most extensive guidance on the use of stop-and-search powers. Further specific guidance has been set out on the use of stops for counter-terrorism. This has been revised in light of the European Court of Human Rights’ *Gillan and Quinton* ruling, but continues to reflect an internal contradiction as it states that counter-terrorism powers are “to prevent terrorism, while allowing for people to be stopped even if they are not suspected of terrorist involvement.”⁸⁰

Police and Criminal Evidence Act (PACE) 1984 and Other Stop and Search Legislation

The PACE Code of Practice A sets out the power of police to stop and search people on the street⁸¹ under legislation on firearms, drugs, terrorism, and public order. Section 1 of PACE grants police officers the power to stop, search, and detain an individual if there is reasonable suspicion that the person is carrying stolen or prohibited articles, in order “to enable officers to allay or confirm suspicions about individuals without exercising their power of arrest.”

PACE includes two key safeguards: (1) the requiring a threshold of reasonable suspicion, and (2) mandating that stops and searches be recorded and monitored. The Code of Practice states that “reasonable suspicion” must be based on objective and individual grounds, and that:

Reasonable suspicion can never be supported on the basis of personal factors alone without the supporting intelligence or information. For example, a person’s colour, age, hairstyle or manner of dress, or the fact that he is known to have a previous conviction for possession of an unlawful article, cannot be used alone or in combination with each other as the sole basis on which to search that person. Reasonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity. A person’s religion cannot be considered as reasonable grounds and should never be considered as a reason to stop and search an individual.⁸²

The code also requires that stops and searches be recorded.⁸³ Officers are required wherever practicable to provide the person who has been stopped with a record of the encounter, which includes the grounds for the search, the object/s that officers are looking for, the outcome, and the name and station of the officer(s) conducting the search. The record also contains personal details of the person searched such as name, address, ethnic origin, and a description, all of which the person can refuse to give.

Recording stops and searches has three objectives:

- (1) to make officers more careful in making well-grounded stops;
- (2) to promote openness with the public by providing a written record including information on how to make a complaint; and
- (3) to generate data through which supervisors, police authorities and local communities can identify officers’ incorrect use of powers.

Under section 67 of PACE, failure to comply with the Code of Practice is a disciplinary offense, and breaches of the code are admissible as evidence in any criminal or civil proceeding, at the judge's discretion.

British law provides police with other legal powers to conduct stops that do not require reasonable suspicion. Searches made under section 60 of the Criminal Justice and Public Order Act 1994 (as amended by section 8 of the Knives Act 1997), or section 44(1) and (2) of the Terrorism Act 2000 require prior authorization and are recorded but do not require reasonable suspicion.

Section 60 allows an inspector or higher ranked officer who has reasonable fears that there are weapons or a risk of a serious violence in a particular location to authorize uniformed officers to search any person or vehicle in that area during a period of 24 hours or longer. The data from 2010-2011 showed that black people were over 37 times more likely to be stopped and searched than white people under section 60, while Asian people were over 10 times more likely to be stopped and searched than whites.⁸⁴ This confirmed previous findings that officers rely more on stereotypes when they have greater discretion to conduct stops, and that this results in discrimination.⁸⁵

A new power, section 47a of the Terrorism Act 2000⁸⁶ came into force under special order on March 11, 2011 (replacing sections 43 and 44 of the Terrorism Act⁸⁷ which were ruled incompatible with the European Convention of Human Rights in the European Court of Human Rights decision in *Gillan and Quinton v. the United Kingdom*⁸⁸). Section 47a allows for police officers to search for articles related to terrorism without reasonable suspicion. Section 47a powers may only be used in an area and time-frame specifically authorized by a senior officer. The senior officer authorizing the use of section 47a "must reasonably suspect that an act of terrorism will take place and considers that the powers are necessary to prevent such an act and that the area(s) or place(s) specified in the authorisation are no greater than is necessary and the duration of the authorisation is no longer than is necessary to prevent such an act."⁸⁹ The Joint Committee on Human Rights (JCHR) recently raised concerns that despite revisions following the *Gillan* case, 47a powers continue to invite human rights breaches.⁹⁰

Schedule 7 of the Terrorism Act 2000⁹¹ provides police officers with the legal power to stop, question, search, and detain people without reasonable suspicion in airports, seaports, and international railway stations. These stops are to determine whether or not the person is involved in terrorism. The law allows for initial screening questions, followed by an examination which can include searches of person and property, taking fingerprints and DNA, and detention for up to nine hours. Once a process has lasted for an hour, the examining officers should provide an explanatory Notice

has lasted for an hour, the examining officers should provide an explanatory Notice of Examination and explain its content to the person being examined. All Schedule 7 cases that go beyond the initial screening questions must be recorded, and include the names of the person examined, total duration of the examination and, if detained, length of detention.⁹² Recent guidance recommends that all police forces record self-defined ethnicity of the people examined for the national police audit purposes, yet this information is still not publically accessible.⁹³

General principles of good practice for operational guidelines:

- ▶ Operational protocols, regulations, and training should provide detailed and practical guidance for all officers on how to carry out their duties with full respect for non-discrimination standards.
- ▶ Compliance with such guidance should be reinforced through supervision and through disciplinary measures in cases of abuse.
- ▶ All law enforcement officers should be made aware of the processes and penalties for failures to abide by non-discrimination standards and any such breaches must be addressed in good faith and with seriousness by managers.
- ▶ Operational protocols designed to address individual responsibility and behavior may not be adequate to address ethnic profiling as a pattern of practice across the institution and should be complemented by other mechanisms that can audit broader policies and practices. (See Chapter IV for a discussion of external oversight bodies and Chapter VII for more information on policy audits).

Ethnic Profiling in Immigration Enforcement

Article 3.2 of the EU Racial Equality Directive⁹⁴ derogates the principle of non-discrimination in immigration control matters,⁹⁵ allowing for differential treatment on grounds of nationality. This exception applies only to the category of nationality, not national origin. However, the Directive's prohibition of discrimination on grounds of racial or ethnic origin does apply to nationals of third countries.⁹⁶

The European Court of Human Rights has consistently underscored that the "Convention does not guarantee the right of an alien to enter or to reside in a particular country" or impinge on governments' powers "to control the entry, residence and expulsion of aliens."⁹⁷ And yet, the court has ruled that discrimination based on nationality

is covered by the non-discrimination provision of the European Convention on Human Rights. The court has also articulated a very high threshold for justifying unfavorable treatment based on nationality.⁹⁸ This means that while immigration decisions such as the right of entry and residence are based on nationality, individuals—including third country nationals (that is, non EU nationals)—are protected against discrimination on grounds of racial or ethnic origin or other prohibited grounds in all areas of public life outside the sphere of immigration. In addition, different treatment of specific ethnic groups within a nationality group constitutes profiling—as when the French government in 2010 targeted only Romanian Roma for detention and deportation, or when British immigration officials targeted Roma travelers from the Czech Republic.⁹⁹

There is little existing research identifying practices that may constitute ethnic profiling at borders. The European Union’s *Practical Handbook for Border Guards (Schengen Handbook)* prohibits discrimination and calls for courteous treatment of all persons, but does not provide practical guidance on valid and productive grounds for selecting persons for additional scrutiny at borders. There are also relatively few standards and policies providing guidance on non-discrimination obligations for national immigration authorities and officers.

Immigration and border authorities have developed various responses to concerns about discrimination in border checks. The use of behavioral profiles is common and increasingly sophisticated among many immigration and customs agencies and important in focusing officers’ attention on behavioral risk factors rather than assumptions about nationality or ethnicity and offending. The Belgian case study below is an example of an intelligence-based system of profiles using behavioral and geographic factors.

BELGIUM

Brussels Airport Information-based Behavioral Profiling

The Brussels airport aviation police have a system of geographical and behavior-based profiling to help identify potentially suspicious persons before they arrive at the airport. Profiles are intelligence-based and constantly updated.

The first level profile identifies flights from countries or regions of higher risk for organized crime (for example, information that flights out of West Africa are higher risk for trafficking in drugs), and high-risk flights are selected. Judicial police screen passengers on high-risk flights through a second level of profiling using passenger data from airlines under existing agreements.¹⁰⁰

In order to conduct a check using airline data, the judicial police require authorization from a prosecutor, who provides a written order. Border control officials are given a list of persons arriving on specific flights to control. Aviation police statistics show detection of illegal acts in one out of five persons identified through this screening.

Behavioral profiles or specific guidance have sometimes been developed or strengthened in reaction to accusations of ethnic profiling—as in the UK case study that follows. The new UK approach also required additional supervision. Requiring officers to articulate their reasons for questioning or searching someone has been shown to improve targeting and detection of contraband or offenses—as was the case with a similar policy introduced by the US Customs Service, as described in Chapter VI.

UNITED KINGDOM

UKBA Customs Guidelines on Selection and Searches of Persons

Following accusations of ethnic profiling of Afro-Caribbeans by the United Kingdom Customs service, a 2006 review led to new guidance on the selection and targeting of passengers. The new guidance is intended to ensure that all officers base their selection on intelligence, not ethnicity or stereotyping.¹⁰¹

Customs officers either follow specific intelligence about a flight or person, or select high risk flights based on daily intelligence briefings and trend analysis. Once flights are identified, custom officers “visually profile” those disembarking; guidance on visual profiling establishes a cluster of indicators that may be the basis of suspicion.

Customs officers must base their searches on eight “suspicion areas” that are recorded and supervised. The eight suspicion areas include origin, destination and route, baggage, and behavior, among others and the indicators are regularly updated. Each area includes a set of questions ranked from lowest to the highest risk. For example:

- Does the baggage look big and bulky?
- Is the person acting nervously?
- Is the person avoiding customs officials?

Supervisors review the grounds at the time of each search,¹⁰² and again a monthly basis. The guidance also states that customs officers should end an encounter as

soon as they are satisfied that there is no reason for suspicion, and should not always proceed to a search.

The 2006 review also changed the “guidance on searches of persons” to require customs officials be able to articulate “reasonable grounds” to suspect that a person is in possession of illegal goods or substances. Officers are generally required to have more than one ground for suspicion, but certain single factors will be considered reasonable—such as a dog alert to drugs.

Every person has the right to appeal the request to search. This right is explained, and the person signs a form to say that they understand the right.

It is important to have mechanisms for complaints and redress. Investigations into cases of ethnic profiling can demonstrate shortfalls in officer understanding or behavior that may then be addressed through new policies. The following case study on the Netherlands describes a ruling issued by the ombudsman’s office on non-discrimination in the context of border controls.

NETHERLANDS

Practical Guidance on Non-discriminatory Treatment in Border Controls

In 2005 a traveler transiting through Schiphol Airport brought a case against the Royal Military and Border Police (KMar), alleging that she was treated in a discriminatory manner on the grounds of her dark skin color, because a KMar officer questioned her about the purpose of her stay in the Netherlands. When she responded that she was a United Kingdom citizen, the officer answered “So what?” White passengers were not asked similar questions.

In Decision No. 059 of 2008, the Dutch National Ombudsman found in her favor, ruling that in subjecting her to additional questioning, the KMar officer had violated the prohibition on discrimination in the context of border checks of European Union passport holders.

The decision notes that “under the (Constitutional) prohibition of discrimination, an administrative authority may not discriminate on any grounds.” It cites the Aliens Decree 2000 and the Schengen convention which make clear that nationals of EU member states may only be asked detailed questions when there are indications that

the person could pose a threat to public safety. The decision states that the officer overstepped his authority by asking questions which, strictly speaking, should not be asked. It notes that:

It is possible that the officer did not consciously intend to discriminate against the petitioner. His actions could also be explained by his having doubts about the petitioner's nationality or her passport.

However, the actual situation did indeed involve unequal treatment. By asking a black woman a more searching question than was authorised, and then continuing after she justifiably challenged him, and moreover not posing the same question to the white passenger behind her, the officer subjected the petitioner to unequal treatment in the negative sense. Because he did not explain his actions or his motives, he at least gave the petitioner the impression, under those circumstances, that he was discriminating against her (consciously or subconsciously) on the grounds of her ethnicity. In any case, his indifferent reaction was inappropriate.

The contested question and the officer's off-hand attitude could conceivably be explained by his not knowing where the limits of his authority were and what questions he could legitimately ask an EU citizen. It is vital that border control officers understand the extent of their powers and realize that passengers who are subjected to unauthorized questioning may perceive this as discrimination.

Immigration enforcement is not limited to immigration and customs officers stationed at borders and at points of entry. In many EU countries, domestic law enforcement agencies also carry out immigration enforcement activities within national borders. Few countries have clear standards on the use of appearance in immigration enforcement, and in some (such as Spain) the courts have developed troubling case law, ruling that police may in fact use ethnic appearance in immigration controls.¹⁰³ In Sweden, the Aliens Act states that a person may not be stopped or checked solely because of his/her skin color, name, language or similar characteristic.¹⁰⁴

French case law described in the case study below provides a non-discrimination standard and criteria that attempt to delineate reasonable grounds for immigration stops. In practice, pressures to increase immigration enforcement have led to increasing accusations of ethnic profiling in France in recent years, pointing to the need for jurisprudence to be reflected in clear practical guidelines and in operational policies.

Police Stop Powers for Immigration Control Purposes

All foreigners in France must carry with them at all times proof of their legal stay in the country.¹⁰⁵ Foreigners are obliged to comply with identity controls by police authorities, which can be carried out at any time.¹⁰⁶

French law stipulates that police must base their stop-and-search activities concerning immigration control on “objective criteria,” that make it reasonable to assume that the individual is of foreign origin, including the acts of reading a newspaper or book written in a foreign language, driving or riding in a car with foreign license plates, and/or playing “folk” instruments in a public space.¹⁰⁷

Constitutional jurisprudence has further codified what criteria can and cannot be taken into account when carrying out an immigration-related identity control. A 1993 judgment rendered by the Constitutional Council ruled that under no circumstances can immigration stops by police be motivated by discriminatory indicators such as skin color, body type, or clothing style.¹⁰⁸ A related judgment further stipulated that police officers must always tie the action taken with the particular circumstances surrounding the identity controls.¹⁰⁹

Immigration enforcement is particularly challenging in France and many other European settings. When conducting immigration enforcement, officers frequently engage in ethnic profiling when making decisions about who to stop, basing their suspicion that someone is an undocumented migrant on “foreign”—typically non-white—appearance.

Clear standards and operational guidance are important to assist officers in making more nuanced assessments of the likelihood that a person may be an illegal immigrant, and in guiding the kinds of powers that can and should be used in domestic immigration enforcement as well as at borders. As the case study from France illustrates, operational guidance on identifying illegal immigrants is often unclear, leaving law enforcement officers too much discretion in deciding who to stop and thereby enabling ethnic profiling.

Law enforcement officers must not use immigration control powers to target those that “look different” in assuming that they are not citizens or legal residents. This is not a valid assumption in today’s multi-ethnic Europe; it is offensive and insulting to many Europeans of diverse ethnic origin. Police policies, guidance and training need to reflect the challenges of policing crime, terrorism and immigration in multi-ethnic societies.

Improving law enforcement relations with communities with large numbers of recent migrants can be particularly challenging given language and cultural barriers, attitudes toward law enforcement shaped by repressive policing in their home countries, and the presence of undocumented migrants who avoid contact with law enforcement. (Community outreach is addressed in Chapter VIII.) Aggressive enforcement of immigration law destroys trust and directly undermines community cooperation from legal residents and citizens of minority ethnic origin as well as from persons in irregular status.¹¹⁰

General principles of good practice for reducing ethnic profiling in immigration enforcement:

- ▶ Passport controls and other checks should be monitored through gathering statistical data on the ethnicity and national origin of those stopped to ascertain whether disproportionate and/or unjustified stops of persons of ethnic minority and immigrant origin are taking place.
- ▶ Border and customs screening systems should be intelligence-based and rely on behavioral criteria, avoiding the use of ethnicity, religion, physical appearance, or similar personal characteristics.
- ▶ Standards and guidance should provide officers with clear instructions on permissible versus impermissible uses of ethnicity, race, and national origin in conducting of their controls.
- ▶ Requiring direct supervision or authorization of searches will improve officers' decision-making.

Strategic Action Plans

Strategic action plans, as discussed in this section, are a high-level response to an identified problem, sometimes politically mandated but also undertaken by senior law enforcement leadership. Strategic action plans provide a vehicle to undertake a macro-level analysis of problems, set out policy responses in each area, allocate responsibilities and resources, and sequence policy implementation. They represent a clear political commitment to take steps to address a problem and can serve as a foundation and roadmap for a holistic approach to tackling ethnic profiling. While many European countries have developed national action plans to combat racism, these rarely focus on ethnic profiling.

The case studies below present Ireland's National Action Plan Against Racism as it relates to law enforcement, and the Garda's Diversity Strategy and Implementation

Plan 2008–2010 which sets out challenges and policy initiatives in multiple areas. The component elements of a strategic action plan have also been put to creative use in the Netherlands, where the highly decentralized nature of Dutch law enforcement means that national government control has been very limited (structural changes introduced in 2011 are reducing the number of forces in The Netherlands). In response, the National Diversity Expertise Centre (LECD) developed a self-evaluation tool with a cash prize for the winning law enforcement service.

IRELAND

National Action Plan Against Racism

Ireland's National Action Plan Against Racism (NPAR) was implemented between 2005 and 2008. The plan defined racism as: "a specific form of discrimination and exclusion faced by minority ethnic groups. It is based on the false belief that some 'races' are inherently superior to others because of different skin colour, nationality, ethnic or cultural background. Racism denies people of their basic human rights, dignity and respect. Racism is a complex and multi-faceted concept, ranging from small, everyday acts of discrimination, through the barriers and omissions that may be inadvertently established at an institutional level, to acts of threatening behaviour and violence."¹¹

The plan set out goals specific to the area of policing under the chapter "concerned with effective protection and redress against racism, including a focus on combating discrimination, assaults, threatening behaviour and incitement to hatred." Objective 1.4. is "to enhance the role of the Gardai [informal name for the Garda Síochána, the Irish national police force] to provide protection against racism."

While it is important that policing was included as part of Ireland's national action plan against racism, its broader impact across the Garda organization was not clear. The NPAR does not specifically address ethnic profiling and other issues of discrimination within the Garda organization, although these clearly fall under the NPAR's definition of racism. The plan rather primarily focuses on police responses to racist incidents committed by civilians and police relations with minority communities.

Policing Plan 2008

The Garda Síochána defines its goals and strategies in annual policing plans. Goal five of the 2008 plan focused on promoting ethnic and cultural diversity and providing equal protection and appropriate service, while nurturing mutual respect and trust. Specific actions involved developing a diversity strategy, ensuring that the Garda Síochána be representative of the community it served, evaluating the effectiveness of the Garda Racial and Intercultural Office and enhancing its capability, developing effective policing approaches for minority and marginalized groups and communities, and enhancing the Garda Síochána ethnic and cultural services. This plan included important activities aimed at improving relations and building confidence of minority communities in the Garda Síochána. However it did not include actions specifically designed to recognize, identify or address ethnic profiling practices. Unfortunately, the 2009 plan contained fewer specific actions under the goal of “ethnic and cultural diversity,” and the 2010 plan eliminated this goal altogether.

General principles of good practice for developing and following strategic action plans:

- ▶ National action plans or strategic plans against racism can give the issue of ethnic profiling visibility, establish a roadmap for action, locate resources, and assign leadership to address issues of discrimination including ethnic profiling.
- ▶ An effective plan must specifically include ethnic profiling.
- ▶ The plan must include clear objectives, incentives, and rewards for success, and consequences for failure.
- ▶ The plan should include benchmarks that facilitate evaluation and be submitted to regular review, involving all relevant stakeholders.

IV. Oversight Bodies and Complaints Mechanisms

Law enforcement oversight bodies and complaints mechanisms can address ethnic profiling. But in order to do so, they must have the ability to generate and monitor law enforcement data—including statistics disaggregated by ethnicity—that could be used to prove the existence and extent of ethnic profiling, and investigate individual complaints.

To address ethnic profiling it is essential to determine the extent of the practice and the qualitative differences in the experience of different groups of people of being stopped, searched, questioned, or arrested. There are a variety of research approaches, each providing distinct data and analytic perspectives on ethnic profiling practices. This chapter explores the steps that oversight bodies, complaints mechanisms, and specialized equality bodies can take to monitor and address ethnic profiling, and the challenges they may face in doing so. The strengths and weaknesses of each approach are examined, and case studies illustrate different types of bodies, their investigatory powers, and processes for seeking remedy.

Internal Complaints Mechanisms

Internal police complaints or disciplinary mechanisms require people to take their complaint about unfair treatment to the law enforcement agency itself, where the matter is investigated internally. Some investigations are conducted by a specialized internal affairs bureau or similar structure. Internal complaints or disciplinary bodies rarely address ethnic profiling, and generally speaking are structured to address individual

officer misconduct more than patterns of practice sometimes produced by operational decision-making or habitual policing approaches. The circular adopted in the Greek case study below requires that internal disciplinary inquiries consider the possibility of racist intent. A positive step, this requirement does not encompass the indirect discrimination (when policies or actions that appear neutral, or do not include any explicit racial, religious, or other grounds for differential treatment, in fact produce disproportionate outcomes for certain minority groups) that is often at the heart of ethnic profiling patterns.

GREECE

Requirement to Investigate Racist Intent

Following the judgment of the European Court of Human Rights in the case of *Bekos and Koutropoulos v. Greece*,¹¹² the National Directorate of the Police adopted a circular in June 2006 which requires that officers conducting administrative inquiries into violations of police ethics involving persons belonging to vulnerable ethnic, religious, or social groups (such as the Roma or foreigners) investigate whether the police behavior was motivated by a racist intent.

Internal complaints mechanisms are often viewed with considerable mistrust by citizens in many countries due to a perceived lack of independence and impartiality. This has led to the creation of mixed internal (law enforcement) and external (civilian) oversight bodies, as well as specialized independent external oversight of law enforcement. External bodies can receive and investigate individual complaints and may also provide broader law enforcement oversight by monitoring patterns of police practice that may indicate ethnic profiling. They can often issue recommendations for policy changes to enable improved monitoring or put in place mechanisms to address ethnic profiling.

Independent Complaints Mechanisms and Civil Review Bodies

Many EU member states have established both national equality bodies and specialized police complaint or oversight bodies that are independent of the police. Such mechanisms play an important role in identifying and drawing attention to discriminatory law enforcement practices and recommending specific remedies. Experts often argue that independent bodies are more effective than internal mechanisms because of their

greater autonomy. In the US, scholars have questioned this and found that an auditor model in which an external expert oversees internal processes has a greater impact on police practices than civilian review boards that conduct their own investigations.¹¹³

Across Europe, there is significant variety in their ambit to address complaints against law enforcement officers (police, immigration and customs officers, and border guards). In some cases, oversight bodies can address most of these authorities, but do not have jurisdiction in the realm of counter-terrorism. A rare exception, the Belgian Standing Intelligence Agencies Review Committee (Committee I), does provide external oversight of intelligence (a function most commonly performed by a special parliamentary committee), but it does not look at conduct or discrimination issues.¹¹⁴ It focuses rather on the legitimacy, effectiveness, and coordination of the work of intelligence services.

It is essential that ethnic minorities be made aware of such complaints bodies and the complaints process. Created in 2007, Ireland's Garda Ombudsman (GSOC) undertook a targeted outreach during its first year of functioning to "new communities" of recent immigrants and Travellers. GSOC staff reached out to community organizations and attended community gatherings, providing the following information on the GSOC and its procedures.

The United Kingdom has an Independent Police Complaints Commission (IPCC) that investigates serious complaints and allegations of misconduct and can make policy recommendations. The IPCC has overall responsibility for the police complaints system, and is charged by law with increasing public confidence in the police complaints system in England and Wales. The IPCC is an independent body autonomous from the police, government, and complainants.

The IPCC investigates the most serious complaints and allegations of misconduct against the police in England and Wales, as well as handling appeals from people who are not satisfied with the way police have dealt with their complaint. In February 2008, its jurisdiction was extended to include United Kingdom Border Agency (UKBA).

In addition to external civilian oversight of law enforcement, two other models exist in Europe. Sweden, Denmark, and Norway have special officers attached to the Prosecutor General who receive and investigate complaints against police officers. In Denmark, however, "petty complaints" are dealt with at the police station where they are reported, leaving open the possibility that complaints against discriminatory stop-and-search encounters and other examples of ethnic profiling will never progress beyond an internal review. The Netherlands has established a hybrid internal-external model of

complaints commissions that include both police and expert (judges, lawyers, etc.) civilian members. The first phase of the complaints procedure is internal: the complaint is made to the law enforcement agency and processed by that agency through mediation. In cases in which the matter remains unresolved, the complaint is passed to the external members of the commission. The effectiveness of this process reportedly varies. It has been proposed that such investigations should be automatic rather than discretionary in any case in which discrimination is alleged.

Some review bodies may undertake self-initiated investigations of issues of concern that come to their attention. Other bodies can only investigate individual complaints and, in some cases, may analyze cases for patterns of abuse of discrimination and recommend changes in policy or practice to address them. The United Kingdom Independent Police Complaints Commission has undertaken several studies of ethnic profiling issues as described in the case study that follows.

UNITED KINGDOM

Independent Police Complaints Commission (IPCC)

Most complaints about stops and searches in the UK are made directly to local police stations and handled through informal local mediation between the police and the complainant. The IPCC handles appeals in cases where complainants are not satisfied, or more serious allegations of discriminatory use of police power or use of force. In addition, the IPCC has conducted wider investigations into the systemic use of stop-and-search tactics.

In 2007, the IPCC investigated the use of section 60 stop-and-search powers which allow police officers to stop individuals without reasonable suspicion “in anticipation of violence” in the West Midlands, responding to a complaint and evidence of systemic misuse of the power. Based on an analysis of stop data, internal authorizations for operations, intelligence briefings, in-depth interviews police officers and community representatives, and comparisons with other forces and areas with similar crime problems, the IPCC found that section 60 was being used inappropriately to deal with routine crime problems with no justifiable reason why normal police powers were not being used.

In 2009, the IPCC released a policy position giving guidance to police forces on the proper use of their stop-and-search powers, and establishing standards by which stop-and-search complaints should be judged.¹¹⁵ The IPCC recognized that “the use of stop and search powers are highly intrusive and may risk seriously undermining

individual and community confidence in policing.” The exercise of stop-and-search powers should not only be “within the law,” but should also be demonstrably fair, effective, and inspire public confidence in the police.

The report placed the onus on police forces to demonstrate through regular monitoring that their powers are being properly, taking into account the volume of complaints; the number of fines (fixed penalty notices), cautions, arrests and charges arising from stops; the impact on crime profiles; and the level and quality of local intelligence-gathering. The policy note identified several elements critical to public confidence, including the quality of local complaint resolution and the willingness of the police to provide an explanation or apology (where appropriate) and to learn from complaints. It recommended that investigations emerging from complaints should focus on the intelligence and authorizations that led to the stops and searches, as well as the individual officer’s knowledge of the powers and proper procedure, rather than just on the alleged misconduct.

The depth and detail of the IPCC’s investigations and recommendations reflect both the longer history of concern with ethnic profiling and the availability of ethnically-disaggregated statistics in the UK, which facilitate inquiries of the sort described above. Elsewhere in Europe, scrutiny of ethnic profiling is less common and more challenging. This is due to factors including oversight bodies’ common focus on individual complaints rather than patterns of law enforcement practice, the lack of ethnic data, and the challenges of proving discrimination in individual cases of abuse by law enforcement. Ethnic profiling may not readily arise from individual complaints, as profiling often involves actions such as identity checks and stops and searches that individuals view as relatively routine annoyances and frequently do not see as serious enough to warrant the effort of making a complaint. Where complaints do appear to reveal patterns of ethnic profiling, additional research may be necessary to develop a clear picture of the prevalence and severity of allegations of ethnic profiling.

A final challenge lies in the substantiation of complaints. In complaints of discrimination, as in many other complaints of abuse, adjudication frequently must be made on the basis of the account given by each individual—the officer and the civilian complainant. Complaints investigations frequently find little or no material evidence or witnesses and have great difficulty in finding against an officer’s account of the reason for their action. Such incidents do not generally provide a reliable means of capturing ethnic profiling practices. (This is not the case in serious abuse incidents where there may be medical evidence of physical abuse.) The difficulty of substantiating individual complaints further highlights the importance of broader investigations into patterns of practice by oversight bodies.

Civilian oversight can and should do more to identify and address ethnic profiling as a form of indirect discrimination. To do so, complaints bodies must be empowered to scrutinize institutional policies and practices that underlie or permit ethnic profiling. Despite the challenges mentioned here, a number of noteworthy practices have emerged in Europe demonstrating how complaints bodies can address systemic discrimination, including ethnic profiling, despite limited or partial data on ethnicity and other grounds for discrimination, as can be seen in the following case study on Belgium’s “Comité P” and the French National Commission on Police Ethics.

BELGIUM

Comité P

Comité P is Belgium's independent police oversight mechanism created in 1994 to increase police accountability and enhance parliamentary oversight. It has a dual mandate to examine the protection of constitutional rights and efficient service delivery by the police. Comité P has five members appointed by the House of Representatives for five-year terms that may be renewed once.

Comité P can receive and investigate individual complaints and can also act on its own initiative. Investigations are carried out by a special investigative service with extensive powers, including direct investigation of criminal acts. The committee can also provide assistance to victims, carry out awareness-raising activities, initiate and participate in court proceedings, and research structural problems. Comité P emphasizes its role in identifying problems in the functioning of police services and recommending solutions to parliament and government.

Comité P has conducted several studies related to ethnic profiling. In 2005, it analyzed complaints received the previous year, looking for patterns of racism and discrimination. The analysis looked at the context (e.g. identity checks, traffic stops, other infractions), the type of act (racist speech, improper behavior or attitude, discrimination/bias in an intervention), and the police service involved.¹¹⁶ The analysis relied on database coding of complaints involving racism or discrimination. It identified personal characteristics of complainants such as sex and linguistic regime (French or Flemish), but did not identify ethnicity as this information was not collected and the researchers did not want to use foreign names as a proxy for ethnic origin. The research found 70 complaints registered for racism or discrimination in 2004. A similar study examined years 2000 to 2003 and did use the complainant's name or the content of the complaint to determine foreign nationality.

National Commission on Police Ethics

The National Commission on Police Ethics (CNDS) is an independent administrative authority created in 2000 to ensure compliance with ethics rules by French law enforcement officers. Individuals can present complaints to the commission via a member of the National Assembly, Senate, the Ombudsman's office, the High Authority against Discrimination and for Equality (HALDE), the Children's Defender, or the General Supervisor of Places of Detention and Deprivation of Liberty. The CNDS cannot independently initiate investigations.

The CNDS publishes annual reports that include a different thematic focus each year. In 2004, the annual report analyzed complaints to determine whether there was a pattern and practice of discrimination over the prior four-year period. The study reviewed 36 discrimination cases and 78 cases of violations of police ethics. The study presented a detailed picture of police discrimination, with in-depth analysis of the type of police officials involved, victims, and possible causes of the problem.

The report noted that the range of victims is diverse in terms of age, gender, and ethnic origin, but that of the primary group of victims were youth aged 18 to 35 of North African origin who encounter police in the suburbs of Paris. According to the CNDS, "the reasons for the police action are often the same: preventive identity checks, intended to mark the presence of the security forces in the neighborhood, sometimes on the occasion of gatherings of young people or disturbing the peace at night."¹¹⁷ The officers involved tended to be young and inexperienced, and often lacked adequate training or supervision. The report flagged the widespread use of stereotypes by officers, and noted that certain police officers associate "visible populations" (ethnic minorities) with criminality and sensitive neighborhoods, and treat all such persons as members of a high risk group rather than on the basis of their actions as individuals.¹¹⁸ The recommendations set out a range of measures to address institutional discrimination and racism, including training, supervision, organization, internal guidelines and instruction, and respect for legal regulations.

Former CNDS staff have noted dramatic increases in the number of complaints (a 50 percent increase from 2008 to 2009) and continue to confront slow and hostile responses to their findings from the Ministry of the Interior and police unions. In 2011, the CNDS was incorporated into a new national office for the defense of rights (Defendeur des Droits).

In Ireland and Northern Ireland, police oversight bodies collect ethnic and other data from complainants on a voluntary basis. Both bodies discussed below have the power to investigate policies and patterns of conduct, but neither has used these powers to carry out systemic research into ethnic profiling practices.

IRELAND

Garda Síochana Ombudsman Commission

The Garda Síochana Ombudsman Commission (GSOC) is an independent institution that deals with all complaints from the public about the conduct of Garda Síochana officers. Established in 2007, the GSOC can also examine “practices, policies and procedures of the Garda Síochana.”¹¹⁹ The GSOC has a data-collection system that records certain personal information about complainants including age, sex, nationality, ethnicity, religion, and highest educational attainment. Complainants supply this information on a voluntary basis. The type of allegation is captured under categories: abuse of authority, discourtesy, neglect of duty, discrimination, and other. The ethnic data captured is partial, but provides some indications of ethnic profiling.¹²⁰ Also, twenty-five complaints involving allegations of discrimination were recorded in 2009, 22 in 2008, and 39 in 2007. While these factors should enable the investigation of institutional practices that result in discriminatory outcomes such as ethnic profiling,¹²¹ to date, the GSOC has not addressed this issue.

The Northern Irish oversight board also collects ethnic and other personal data on a voluntary basis. When this data indicated a possible problem with profiling, the police ombudsman undertook further research to identify issues in minority communities’ experiences of policing.

Office of the Police Ombudsman

The Office of the Police Ombudsman for Northern Ireland (OPONI) was established in 1998 to provide an impartial and independent system for investigating complaints against the Police Service of Northern Ireland (PSNI). In addition to investigating complaints it receives, OPONI can conduct *ex officio* investigations if it has reason to believe that a police officer may have committed a criminal offense or violated the police code of conduct. Importantly for the detection of ethnic profiling, OPONI can also monitor complaints for trends and patterns.

Persons reporting complaints are sent a questionnaire that asks for personal data including gender, age, religious belief, racial group, country of birth, marital status, disability, political opinion, dependents, sexual orientation, and employment status. The data collected also include categories of allegation (traffic, racial discrimination, oppressive behavior, malpractice, incivility, and failures in duty). Complainants respond voluntarily to this questionnaire; the response rate is 31 percent.

The inclusion of a “racial discrimination” category in OPONI’s data gathering has supported monitoring of this issue. The data showed that over a six-and-a-half year period, three percent of complainants were from an ethnic minority background (minorities comprise one percent of the population according to the census). Allegations of racial discrimination comprised less than one percent of complaints by white persons, but seven percent of complaints by persons of ethnic minority groups.¹²² This monitoring is not able to address specific patterns in the use of powers such as identity checks and stops and searches, as individuals rarely report complaints about such relatively routine encounters.

In order to address minority concerns indicated by the data, but where complaint data alone did not provide adequate information for analysis, OPONI and the Northern Ireland Policing Board (an independent police oversight body), commissioned a study to address the experiences and perceptions of policing among black and ethnic minority populations and their attitudes toward law enforcement organizations.¹²³ Nearly a third of questionnaire respondents said that police officers had been rude or impolite to them, and a fifth said that the police had discriminated against them because of their ethnic origin. About one in ten reported problems caused by lack of interpreters and translated material. Other problems included a perceived failure by the police to take respondents seriously, unsatisfactory service, and failing to keep respondents informed of progress or to follow up on a call. The report recommends that the PSNI address issues including procedures for reporting racist crime, training and recruitment, interpretation services, and outreach work.

These case studies also demonstrate that investigations in patterns of practice give rise to recommendations to address broader issues in institutional policy and practice, beyond the behavior of individual officers in specific cases. Recommendations encompassing broader changes to policy and practice are vital to addressing ethnic profiling. Unfortunately, a common weakness of police oversight bodies is their inability to require compliance with their recommendations. Many of the bodies discussed in these case studies make recommendations only to find that they are not acted upon. For example, France's CNDS experienced serious problems getting the Ministry of Interior to act upon its recommendations. Indeed, the Ministry of Interior has preferred to rebut the CNDS's recommendation, even in cases of police violence. The British Independent Police Complaints Commission has been criticized for failing to make its recommendations public, even in high-profile cases that have generated widespread public concern. The Irish GSOC's ability to make their recommendations public (through reports to parliament) is an important element to assuring that these are taken seriously.

General principles of good practice in independent complaints mechanisms:

- ▶ Independence of both the complaints body and its investigative staff is essential.
- ▶ Oversight bodies should reach out to minority groups to make sure that they know of the existence of the organization, its powers and procedures, and how to make a complaint.
- ▶ Oversight bodies should assess complaints and collect data to monitor discrimination—and indirect discrimination in particular. The essential data for addressing discrimination that should be gathered includes: ethnic or national origin, physical appearance, and religion of complainants; and the type of allegation. Data systems must comply with privacy and data protection standards.
- ▶ Oversight bodies should conduct meta-level analysis of complaints received to see if they reveal patterns that suggest ethnic profiling is taking place.
- ▶ Oversight bodies should have the authority to conduct self-initiated investigations. Research is vital to identify and analyze indirect discrimination, including ethnic profiling. Such powers should include the possibility of conducting structural investigations into broader institutional policies and practices when there are grounds to believe that discrimination complaints result from widespread institutional practices.
- ▶ Oversight bodies should make recommendations that go beyond individual complaints and propose reforms to policies and practices that address systemic problems of discrimination. Oversight bodies should also have the power to monitor the implementation of their recommendations.

- ▶ Reports from complaint and oversight bodies should be made public.
- ▶ In cases where the complainant has made out a *prima facie* case of discrimination, the burden of proof in discrimination cases should be shifted from the complainant to the defendant. (This does not apply to criminal law proceedings.)

Specialized Equality Bodies Undertaking Investigations or Providing Redress

The preceding section discussed specialized independent oversight of police. This section now turns to specialized national equality and anti-discrimination bodies some of which can take complaints against law enforcement officers and provide redress to victims of discrimination, including ethnic profiling. Not all specialized equality bodies have a mandate with regard to law enforcement, and those that do often do not cover all areas of law enforcement (counter-terrorism or customs, for example). Equality bodies have varied powers. Many, but not all, take individual complaints. Many have powers to investigate practices, review policies, and develop more general findings and recommendations. Very few of these bodies have received complaints about or undertaken any work specifically on ethnic profiling.

The mandate of France's High Authority against Discrimination and For Equality (HALDE) covers law enforcement officials, but not counter-terrorism, immigration and customs. The HALDE can deal with direct or indirect discrimination and has wide powers, but has not to date carried out any work on ethnic profiling. The HALDE has created special guidance for police on the investigation of hate crimes and discrimination cases reported to the police. When it receives complaints against police officers, HALDE has passed these to the National Commission on Police Ethics (CNDS).

The Dutch National Bureau Against Discrimination has wide-ranging powers and covers law enforcement. In Sweden, the Ombudsman against Discrimination may deal with complaints against the police under the 2010 discrimination law. The Irish Human Rights Commission can accept individual complaints but has focused mostly on policy; it has commissioned an independent consultant to carry out an audit of human rights practices in the Garda, and reported on the treatment of a Pakistani man by the immigration authorities. The Belgian Centre for Equal Opportunities and Opposition to Racism covers law enforcement, immigration and customs, but not anti-terrorism officials. They do not investigate complaints, but have a wide range of other powers. They have received no complaints, nor initiated other inquiries into ethnic profiling.

The Dutch national ombudsman stands out as an example of a very active investigative body that has addressed discrimination issues in numerous cases, two of which are discussed below.

National Ombudsman

The Dutch National Ombudsman oversees law enforcement including ordinary policing functions, anti-terrorism, immigration and customs. The organization can look into individual complaints, and study broader issues it identifies. It publishes some 400 case reports a year, about 150 of which address policing and administration of justice. The Ombudsman does not collect ethnic statistics, but has investigated complaints of discrimination in law enforcement, several specifically concerning ethnic profiling.

One of these cases involved the “100 percent controls” carried out by customs officials at Schiphol airport on passengers arriving from Surinam, Aruba and the Netherlands Antilles.¹²⁴ The investigation, triggered by an individual complaint lodged by a traveler, examined all policies and practices involved in the controls. It considered possible discrimination, and evaluated a list of secret criteria used by customs officials to determine which persons should be subjected to a more in-depth search. The Ombudsman considered whether apparently neutral criteria were in fact producing discriminatory outcomes (indirect discrimination). In this case, there was no finding of racial discrimination, but a number of aspects of the procedure were flagged as problematic.

The case of *Ms. S of New York v. KMar* (discussed above in Chapter III) established a critical principle: that where the complainant had provided facts supporting a presumption of discrimination, the Ombudsman shifted the burden on the defendant—the military border police in this case—to prove that this was not the case.¹²⁵

Another investigation by the Ombudsman examined a police raid involving some 80 officers on a party organized by African immigrants in Amsterdam in 2007.¹²⁶ Although the police claimed they expected to find members of criminal networks involved in internet fraud, they relied on powers granted to them by the Aliens Act to carry out the raid. Sixty seven of the approximately 220 people at the party were detained for immigration violations, and 35 were subsequently deported. There were no resulting prosecutions linked to internet fraud or associated crime. The Ombudsman found that there had been a violation of the right to non-discrimination enshrined in the Dutch constitution because black attendants at the party had been especially targeted for identity checks, while whites were allowed to leave. The Ombudsman also criticized the police publicity around the raid as having the effect of stigmatizing West Africans, and in particular Nigerians, in the Netherlands by explicitly and unjustifiably assuming that they were predominantly illegal immigrants and involved in crime. The Ombudsman also criticized the inappropriate use of immigration powers to carry out a raid primarily aimed at combating crime.

The Ombudsman also investigated institutional practice in the case of three ethnic minority police officers who complained of discrimination in the Aarnum police service.¹²⁷ The complainants had alleged that they were discriminated against in internal procedures for promotions and assignments. The investigation looked at their specific complaint as well as at the police service's broader personnel practices. The Ombudsman concluded that there had not been discrimination in their case, but that there was a lack of transparency in promotion procedures that could create or allow perceptions of discrimination and made recommendations about promotion procedures, internal complaints procedures, and improving internal communications.

In January 2011, the National Ombudsman of the Netherlands launched—in collaboration with the municipal Ombudsman of Rotterdam and Amsterdam—an own-initiative investigation into preventive search actions in designated 'security risk zones.' The investigation examines police organization and implementation of preventive search actions in which any person and his or her goods and vehicle can be search without reasonable suspicion. The Ombudsman's investigation will focus on police selection of individuals for stops and the treatment of those stopped.

The Northern Ireland Human Rights Commission examined concerns with ethnic profiling at borders by immigration officers using direct observation and interviews of immigration officers about their decision-making.

Northern Ireland Human Rights Commission's Research: *Our Hidden Borders: The UK Borders Agency Power of Detention*

In 2009, the Northern Ireland Human Rights Commission (NIHRC) investigated immigration enforcement,¹²⁸ and “Operation Gull,”—a regular operation carried out by British immigration officers at Northern Ireland ports in which incoming passengers from selected flights and ferry crossings were checked to verify their immigration status in the United Kingdom. The inquiry examined the interpretation of the Immigration, Nationality and Asylum Act 1999, to permit detention in prison of some asylum seekers and immigration offenders.

The NIHRC investigators interviewed key immigration service managers and officers and observed “Operation Gull” immigration officers questioning passengers at Belfast City Airport and Belfast Docks over one weekend. Investigators also conducted confidential interviews with detainees at the Docks and Airport, and other staff seconded to the operation from the Police Service of Northern Ireland (PSNI).

The investigation determined that domestic legislation gave too much discretion to individual immigration officers to decide whom to stop and detain, and raised serious concerns that people were selected for questioning on the basis of racial profiling. Most immigration officers indicated that there was no uniform process or formula for carrying out immigration enforcement under “Operation Gull.” Many immigration officers thought the fact that all passengers were stopped was sufficient to avoid discrimination on the grounds of ethnic origin. When probed further on how they decided if additional questioning and investigation were required, answers became more ambiguous and immigration officers appeared to contradict one another in their approach.

“Operation Gull” records showed that between April and June 2007, immigration officers stopped a 202 people for further enquiries. Of these, 47 were of Nigerian nationality, 19 were Chinese and 15 were from the Philippines. The incoming flights that were targeted appeared to be almost exclusively those from London airports, where there is likely to be a higher number of passengers from minority ethnic backgrounds in comparison to airports north of London.

The Commission issued recommendations to bring UKBA officials into compliance with international human rights standards. Specifically, it recommended that all individuals be afforded the same level of protection and that a uniform process be applied to all.

The UK Equalities and Human Rights Commission has also undertaken comparative studies across different police forces in the United Kingdom—an approach that can detect differences in practices and pursue explanations for those that appear discriminatory.

Equalities and Human Rights Commission Investigation: *Stop and Think!*

In March 2010, the Equalities and Human Rights Commission (EHRC) published a comprehensive review into stop and search across England and Wales. “Stop and Think!” concludes found evidence of disproportionate and possibly discriminatory use of stop and search by several forces.¹²⁹ The EHRC’s report uses national and local police data to analyze five-year trends across 42 policing areas and provide case studies highlighting good practice.

The “Stop and Think!” uses a concept of “excess stops” to describe how many more stops and searches are conducted on black and Asian people than would be the case if they were stopped and searched at the same rate as white people. The report calculates that in 2007/08 across England and Wales there were 150,000 ‘excess’ stops and searches of black people—which amounts to the majority of the 172,000 black stops and searches in total. There were similarly 52,000 ‘excess’ stops and searches of Asian people out of a total of 90,000.

In addition to this evidence of ethnic profiling, the report found evidence from some police forces that fairer use of stop and search powers can go hand in hand with crime reduction and increased public confidence in the police. (See the results of the Practice Oriented Package initiative in Stoke-on-Trent discussed in Chapter VI).

On the basis of “Stop and Think!” the EHRC wrote to five police forces (Dorset, Leicestershire, West Midlands, Thames Valley and London) asking them to provide information to explain the persistently high levels of disproportionality and for information on steps being taken to meet their obligations under the Race Relations Act (RRA). The EHRC were unsatisfied with the responses of two forces (Leicestershire and Thames Valley) and in May 2011 entered into a binding agreement with both forces to change practices, with monitoring by the Commission over an 18 months period.¹³⁰ The agreements have not been made public, hindering local communities from monitoring progress.

If possible, in-depth inquiries of the kinds described in the last two case studies are the best way to identify and correct the issues driving ethnic profiling, more focused and limited inquiries can also valuable analysis and support a discussion about appropriate standards. The following case study highlights the findings of a study on Danish legal standards setting out police powers by the Danish national equality body.

The Danish Institute of Human Rights Research: *Ethnic Profiling in Denmark—Legal Safeguards within the Field of the Work of the Police*

In 2011, The Danish Institute of Human Rights (DIHR) published a study of the legal powers and regulation of law enforcement in the realms of ordinary policing, counter-terrorism, immigration and border control.¹³¹ The report examines whether Danish legislation and practices contain safeguards to combat and prevent ethnic profiling.

The report highlights the lack of guidelines for the police in relation to ethnic profiling in stop and search activity in both policing, immigration control and counter-terrorism. It recommends that law enforcement carry out systematic collection of stop data including ethnicity and outcome, improve the complaints system and that the Parliamentary Ombudsman carries out a full pattern-and-practice investigation into ethnic profiling in Denmark. The DIHR draws particular attention to the operation of stop and search under Section 6 of the Police Activities Act, which enables the police to conduct stop and search for weapons without reasonable suspicion in defined “stop and search zones.” The police are required to provide evidence to show why an increased risk of violence exists within specific zones, but there is no time limit on how often the zones can be renewed. The lack of reasonable suspicion, geographical spread of zones, and lack of time limit increase the risk of arbitrariness and may be leading to ethnic profiling. The DIHR believes that this power may contravene article 8 of the Convention of Human Rights and recommends that law is amended in accordance with the European Court of Human Rights Judgment *Gillan and Quinton v. The United Kingdom*.

General principles of good practice for specialized equality bodies:

- ▶ Both the complaints body and its investigative staff must be independent of the police force and other law enforcement authorities.
- ▶ Oversight bodies should reach out to minority groups to make sure that they know of the body, its powers and procedures, and how to make a complaint.
- ▶ Oversight bodies should assess complaints and collect data to monitor discrimination and indirect discrimination in particular. The essential data for addressing discrimination that should be gathered includes: ethnic or national origin, physical appearance and religion of complainants; and the type of allegation. Data systems must comply with privacy and data protection standards.

- ▶ Oversight bodies should conduct pattern and practice analysis of complaints received to see if they reveal ethnic profiling.
- ▶ Oversight bodies should have the authority to conduct self-initiated investigations. Research is vital to identify and analyze indirect discrimination including ethnic profiling. Such powers should include the possibility of conducting structural investigations into broader institutional policies and practices when there are grounds to believe that discrimination complaints result from widespread institutional practices.
- ▶ Oversight bodies should make recommendations that go beyond individual complaints and propose reforms to policies and practices to address systemic problems of discrimination.

Policy Oversight Bodies

A final realm of police oversight—distinct from bodies that examine complaints or specific issues of discrimination—that bears mention here are the government ministries and other bodies responsible for setting law enforcement policy and overseeing police management. Some of these have also addressed ethnic profiling. These bodies generally examine policies and patterns of practice rather than individual complaints. They typically have the ability to make public reports.

The case studies below are from the UK and Northern Ireland and demonstrate how these bodies have conducted inquiries into stop and search, specific issues around young people and a prevention of terrorism strategy. (At the time this book was written, the British government had passed legislation to abolish police authorities and replace them with elected police commissioners.)

UNITED KINGDOM

The London Metropolitan Police Authority Scrutiny Panel on Stop and Search

The Metropolitan Police Authority (MPA) has statutory responsibility to hold the Metropolitan Police Service (MPS) accountable for its performance. The stop and search scrutiny panel was created in response to public concerns about disproportionate use of stop-and-search tactics against minority communities, and focused on five particular aspects of stops and searches:

- the impact of race
- the use of stop-and-search data
- the cost effectiveness of stop and search
- the assertion of disproportionality in criminality
- the identification of good practice.

The MPA reviewed stop-and-search statistics and existing studies; held twelve public hearings; and invited written submissions from individuals and organizations. In May 2004, it published the *Stop and Search Scrutiny Report*, which included 55 recommendations.¹³² The Scrutiny Panel found stark differences between the evidence presented by community members about long-standing experience of racially-biased policing, and the police view of stop and search as an effective policing and crime prevention tool. The panel concluded that racial bias and stereotyping in individual police officers' behavior and in institutional policies and practices (or lack of such policies) both permit and cause disproportionate stop and search practices.

Community testimony illustrated the negative impacts of stop and search: distrust in police, loss of police legitimacy in certain communities, and the alienation of sources of community information and criminal intelligence. The panel recognized that the MPS had cooperated with the scrutiny process, but noted that in practice there was virtually no analysis or interpretation of stop-and-search data for monitoring, supervision, or intelligence purposes, as well as inadequate community-police partnerships.

The panel's recommendations addressed: leadership and recognition of the problem, stop-and search-powers, organizational management, training, public complaints, raising public awareness, and community-police relations. The MPS continues to report to the MPA and local stop-and-search monitoring groups four times a year to review progress on implementing the recommendations. The MPA have supported the development of local borough stop-and-search monitoring groups, and public education about rights and entitlements.

More recently, in May 2011, the MPA held a public consultation around the recording of police use of stop and account (those stops in which officers' ask the individual to account for their presence or activities, but do not lead to searches).¹³³ The consultation included an on-line survey to capture a quantitative measure of opinion and events providing an opportunity for community members especially young people who are most likely to be affected by stops to share their views and take part in discussions that will help the Metropolitan Police Service to decide whether the recording of stop and account interactions should be retained or discontinued.

Policing Board Thematic Investigation into Children and Young People

The Northern Ireland Policing Board monitors the Police Service of Northern Ireland (PSNI) compliance with human rights legislation, including through thematic reviews. In 2011, it conducted a review of policing of children and young people, and another on stop and search.¹³⁴ The reviews are based on oral testimonies and written submissions from a wide range of stakeholders, and have created mechanisms to ensure that the opinions of young people and people who have been stopped and searched were taken into account. This is the start of a process to monitor and review the Police Service's response to the issues raised and recommendations made in the report.

Some countries have policy oversight bodies that are specific to counter-terrorism work. The most common model of accountability in the highly sensitive area of counter-terrorism is that of a parliamentary committee charged with oversight of intelligence services. These exist in the Netherlands, the United Kingdom, and Germany, among other countries, but their composition and powers vary widely.¹³⁵ Such committees generally have access to classified information and, partly for this reason, rarely make public reports. It is unclear whether or to what degree they have taken up issues of ethnic profiling in the use of counter-terror powers by either intelligence services or police and border authorities. The following case study summarizes a parliamentary inquiry into the UK's "PREVENT" counter-terror program.

The Communities and Local Government Committee Review of the Prevent Program

The Communities and Local Government Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Communities and Local Government and its associated bodies. In 2009, the House of Commons tasked this committee with a review of the government's Preventing Violent Extremism (Prevent) program, aimed at stopping radicalization, reducing support for terrorism and violent extremism, and discouraging people from becoming terrorists.

The Committee's review covered a wide range of issues, including: the government's analysis of the factors which lead people to become involved in violent extremism, other research and expert testimony about the risk factors for radicalization, the program's unintended consequences, the appropriateness and effectiveness of community engagement with the program, local delivery of Prevent, and the interface between Prevent and other related policy initiatives.

A call for evidence produced over 70 written submissions from civil society organizations, research and policy institutes, police organizations, local authorities, the Department for Communities and Local Government, and individual experts. The committee also held five oral evidence sessions and conducted a field visit to Birmingham, hearing over 45 witnesses from a similar range of stakeholders.

The committee published a report on its findings and recommendations in March 2010, and made all submissions and records of oral hearings available to the public.¹³⁶

General principles of good practice for policy oversight bodies:

- ▶ Policy oversight bodies should include ethnic profiling in their reviews of law enforcement practices.
- ▶ Policy oversight bodies should use their ability to undertake public or community consultation, and invite expert testimonies.
- ▶ Unless explicitly prohibited, policy oversight bodies should make their findings and recommendations public.

V. Ethnic Monitoring and Law Enforcement Data-Gathering

Determining whether ethnic profiling is taking place—and measuring its extent—can only be done through the use of ethnic statistics. (This report will use the terms “ethnic statistics” and “ethnic data” as shorthand for data that is ethnically disaggregated or otherwise organized according to ethnicity.) Ethnic data gathering remains a sensitive subject for many EU member states. Despite the protestations of many EU member states that generating ethnic statistics is prohibited by data protection norms,¹³⁷ it is important to note that data protection standards do not prohibit the collection of ethnic statistics,¹³⁸ and non-discrimination standards in fact call for ethnic statistics as a necessary means of monitoring and addressing discrimination.

The principle European non-discrimination bodies—the Fundamental Rights Agency and the Council of Europe’s European Commission against Racism and Intolerance (ECRI)—have repeatedly called for ethnic data to be collected, within the bounds of protecting sensitive personal data. Collecting ethnic data makes it possible to better understand and challenge discriminatory policing practices against vulnerable minorities. The FRA and ECRI have called for the collection of ethnic statistics on law enforcement activities as key to monitoring and addressing ethnic profiling.¹³⁹ As with other patterns of discrimination, ethnic statistics are an essential tool to enable the detection of law enforcement practices that focus disproportionate and unwarranted law enforcement attention on ethnic minorities based on stereotypes about ethnicity and crime.

This handbook recognizes that gathering ethnic data must be done in a sensitive manner. Understandably, many ethnic groups—Roma, in particular—remain reluctant to endorse the generation of ethnic data on sensitive topics such as law enforcement and offending. In these cases, it is recommended that other scientifically sound methods be

used, such as those described below, until members of the affected groups understand and accept that the data will not be used in a prejudicial manner.

Properly collecting ethnic data requires close scrutiny of the three main stages of the process—collection, storage and access—in order to prevent any possible misuse of the data. This is particularly important in law enforcement, where there are clear risks that ethnic data could be used to facilitate ethnic profiling, rather than reduce it.

Data protection standards must balance law enforcement’s need to collect and retain data for purposes of detecting, preventing, and investigating crime against the right to privacy and presumption of innocence. The European Code of Police Ethics notes: “The collection, storage and use of personal data by the police shall be carried out in accordance with international data protection principles and, in particular, be limited to the extent necessary for the performance of lawful, legitimate and specific purposes.”¹⁴⁰ European standards establish basic principles of necessity and proportionality of personal data collection—that is, the data must be necessary for a legitimate law enforcement purpose, and should not be kept any longer than is necessary for that purpose.¹⁴¹ They also state that sensitive personal data (such as ethnicity and religion) should not be gathered unless domestic law provides appropriate safeguards.¹⁴²

Police may gather ethnic data on the persons they stop and search for the purpose of detecting discrimination. Given that the majority of the persons stopped face no further legal action and are entirely innocent, their data must be carefully protected, rendered anonymous, and retained only for a limited period of time.¹⁴³ Various approaches may be taken to gathering and using data while protecting privacy. In the United States, New York State law stipulates that stop records must be deleted after six months (deletion does not apply to the statistical data with all personal identifiers removed).¹⁴⁴ A pilot project to generate ethnic data on police stops in Hungary used a form that allowed the ethnicity of those stopped to be recorded on a separate and removable section of the stop form, and strictly segregated from all personal information from the time of collection (please see the next section of this report for a description of the pilot project).

Gathering Ethnic Data on Policing Practices

This section considers how stop data can be collected and the challenges faced in doing so.

One way to collect the ethnic statistics on policing practices is to require law enforcement officers to fill out a stop form every time they stop and search someone. The basic purposes of a stop form are to:

- Detect any disproportionality in stops of minority citizens;
- Chart how stops are being used by officers (reasons for stops, factors leading to the development of suspicion, location and outcomes);
- Encourage officers to consider carefully their grounds for making stops and thus be prohibited from making arbitrary stops
- Provide a tool for enhanced police supervision; and
- Provide a tool for monitoring of police stops by the local communities.

In general, stop forms collect the following information:

- Personal data of the person stopped (name, age, identity card number where applicable, address)
- Ethnicity and/or nationality
- Name and unit of the officer conducting the stop
- Time, date and place of stop
- Legal grounds for the stop
- Grounds for suspicion
- Outcome of the stop (no action/fine/arrest/warning, etc.)
- Additional information on specific situations (e.g. stops of several persons or an incident, descriptions of clothing, other information that might be useful for intelligence purposes).

Please see copies of stop forms reproduced in Appendix A.

Currently, the United Kingdom is the only country to systematically gather national data on law enforcement and ethnicity under legal mandate: British law requires police forces in England and Wales to gather ethnic data on police stop and search practices.¹⁴⁵ The experience of the United Kingdom shows it is possible to collect ethnic data without violating privacy or engaging in discrimination. This information has been collected since 1984 and published annually since 1992. Individual police forces share the stop data on a quarterly basis with local community monitoring groups and on the internet. The London Metropolitan Police Service (MPS) also publishes quarterly statistics on the use of counter-terrorism stop-and-search powers at the local or borough level. In 2007, the UK Home Office and Immigration and Nationality Directorate conducted a feasibility study on the collection of ethnic data during immigration stops. The study found that it is possible to collect ethnic data on immigration decisions to stop and question

passengers at borders, although the methodology needed further development. It also found that data in this area are useful for highlighting disproportional rates of stops and monitoring trends and officer decision-making.

Given historical abuses of ethnic data and ongoing sensitivities, the question of how to define and record ethnicity must be addressed with sensitivity. The UK stop form features 16 “ethnic” categories as well as “other,” and the person stopped is asked to self-identify according to these categories. The officer can also provide his/her perception of the person’s ethnicity if the officer disagrees with the self-identification. The form also records the law under which the stop has been made and provides an open field for officers to record the individualized grounds that led him to suspect that person is involved in crime. This provides the basis for supervision to ensure that officers are conducting their stops in accordance with the law.

In Bulgaria, Hungary, and Spain, a European Union-funded pilot project introduced stop forms which recorded the nationality and/or ethnicity of the persons stopped. These stop forms were in full compliance with national personal data protection law in each country—even in Hungary, which has one of the strictest personal data protection standards in the EU. (Please see Appendix A for the Hungarian stop form.) This project, called Strategies for Effective Police Stop and Search (STEPSS), demonstrated that through monitoring stops, police can reduce ethnic profiling and enhance efficiency at the same time. This project is discussed in more detail below.

In order to analyze data from stop forms and determine whether ethnic minorities are stopped more than whites, the ratio of ethnic minorities in the population needs to be compared to the ratio of ethnic minorities who have been stopped. The question of what population is in fact the fair comparator or benchmark has generated considerable controversy in both the United States and the United Kingdom.¹⁴⁶

Data analysis should certainly seek to be as accurate and precise as possible, but when stop data consistently show that ethnic minorities are stopped at vastly higher rates than the majority population when compared to their overall representation in the population, it indicates an issue that needs to be addressed.

General principles of good practice:

- ▶ Ethnic data are a necessary but not a sufficient tool to address ethnic profiling. It is the first step in a process that uses data as feedback for management and supervision and as a resource for community outreach and dialogue.
- ▶ Gathering ethnic data in a manner consistent with European data protection norms is particularly important for highly discretionary actions such as identity checks and stops and searches.

- ▶ Data should be used in management, supervision, and training, to assess and improve the targeting of police operations, and to enhance individual officers' awareness of the manner in which they use their powers. Proper use of the data should lead to reduced reliance on stereotypes and increased productivity.
- ▶ All sensitive personal data (such as on ethnicity, national origin, religion, sexual preference) that is linked to specific individuals must be strictly protected in accordance with data protection laws.
- ▶ The purpose of gathering ethnic data is to increase the transparency and accountability of law enforcement. All ethnic statistics that can be disclosed consistent with European data protection norms should be made public on a regular basis.
- ▶ Data should form the basis for outreach to local residents to discuss the reasons for any disproportionality and to improve policing based on reviews of local safety concerns.
- ▶ Data collected from police records should be supplemented with data from other sources, including general population surveys, to obtain quantitative and qualitative data on the experiences of law enforcement activities among different groups in the population.

Mechanisms to Ensure Officer Compliance and Reduce Bureaucracy

The use of police generated stop data relies on officers accurately recording their stop practices. The issue of under-recording stops—or officers simply failing to fill out stop forms—is well known and a variety of means are available to monitor and promote officer compliance. In the UK, the Home Office Stop and Search Study encountered significant under-recording of stops and searches during a pilot monitoring process, with perhaps as many as two-thirds going unrecorded.¹⁴⁷ The STEPSS project also found varied compliance levels: when stop forms were compared to radio logs, the results showed that in Hungary officers recorded on average 68 percent of their stops; in Spain the rates varied greatly across the pilot sites from 95 percent to just under 50 percent. Given the problems identified with police-generated stop data, it is important to supplement this data where possible with research from other sources drawing on both quantitative and qualitative methodologies.

The following case study from Merseyside in the UK shows a qualitative approach to check that officers are filling out forms properly.

Merseyside Police Review of Stop Data¹⁴⁸

In Merseyside, senior officers “dip-sample” stop and search forms to ensure that officers are accurately completing forms and meeting legal standards. Each month, 50 forms are randomly sampled from each policing area and specialized unit. The forms are reviewed by an inspector and two sergeants to ensure objectivity. They make a report to the area commander and the assistant chief constable. The initiative was started in September 2008 and has improved the quality of the forms, with the number of correctly completed forms increasing from 82 percent to 96 percent.

Law enforcement officers frequently raise concerns about the burden of additional paperwork involved in completing stop forms and performing data entry. A certain amount of bureaucracy is necessary to ensure that the police are accountable and transparent. Completing stop forms is not a distraction from “real” police work—as some officers have complained—but rather a part of police work that builds trust and confidence and allows police forces to target their use of stops effectively. British civil rights advocates have pointed out that “[s]top and search forms routinely take an average between 2 and 5 minutes to complete”¹⁴⁹ and noted that the adoption of new hand-held computers and smart phones has reduced to the amount of time patrol officers spend on paperwork.

Several British police forces are embracing new technologies to enhance the recording of stops and searches. The case study below provides an example from the West Yorkshire Police who are using BlackBerry® mobile phones to record stop data. (Please see Appendix A for the West Yorkshire BlackBerry® form.) Other initiatives in the United Kingdom have explored recording stops and searches on other mobile data platforms and the “Airwave” radio system that allows an officer to digitally record the details of the stop verbally rather than in writing. In Spain, local police in are testing a pen that automatically records the data as it is written on a paper stop form. Another approach (commonly used in US cities) is for the officer to call in information to radio dispatchers using a simple set of codes.

West Yorkshire Police Use of BlackBerrys® to Record Stop Data¹⁵⁰

In 2009, the West Yorkshire Police participated in a United Kingdom Home Office pilot project to use new technologies to improve the recording of stops and searches. The pilot was successful and now over 4,500 police officers record their stops and searches on BlackBerry® smart phones. The software automatically fills in identifying information for the officers, as well as the GPS location and time of the stop. It also allows officers to fill in the legal basis upon which the stop was based, reason for the stop, outcomes, self-defined and officer-defined ethnicity of the person stopped, and additional information such as description of clothing and other information that might be useful for intelligence purposes. The BlackBerry® is connected to the Police National Computer, and if the stopped person's record is in the system, their record and photograph will appear. If the officer is satisfied that it is the correct record for the person stopped, s/he selects it and it populates the form with name, address, and date of birth. The form cannot be submitted until all fields are completed. The person stopped is given a receipt, which records the unique reference number of the stop and the name of the officer conducting the stop, and also provides information on stop-and-search powers and how to complain or give feedback by text or on the police website. (Please see Appendix A for the West Yorkshire stop receipt.)

Once officers have completed the form it is forwarded automatically to their sergeant for review. Sergeants then check that the form is complete and meets legal standards. If so, it is accepted and logged centrally; if it is rejected, the system automatically sends a message to the officer informing him of what needs to be done.

Testing showed that the paper forms took a total of 22 minutes to complete (including officer completion of 3–5 minutes, sergeant review, and data-entry by an administrator) while the BlackBerry® recording system takes less than 5 minutes in total. (Please see Appendix A for the West Yorkshire BlackBerry® form.) Electronic data recording is enhancing monitoring and accountability by providing a picture of stops by individual officers and across units and forces. It enables more accurate analysis of the location of stops, including cross-referencing with maps of local crime patterns to support effective targeting of stops and searches. The information is shared at community stop-and-search scrutiny panels in each district. It is also used by area management teams in regular meetings where they review where crime is taking place in their areas, where stops and searches have been used, and how successful the intervention has been, and set tasks for the following two weeks.

Reducing Ethnic Profiling and Improving Police Efficiency Through Collecting and Monitoring Data

Gathering ethnic statistics on police use of stop-and-search powers makes it possible to monitor how effectively police use these powers. When police supervisors use stop forms to make sure that officers are basing their stops on reasonable suspicion rather than ethnic stereotypes, officers respond by using their powers more sparingly, more fairly, and more effectively. The use of stop forms has directly supported increased hit rates in varied contexts. In short, the use of ethnic data to monitor officers' performance reduces their individual discretion and pushes them to rely on indicators of suspicion—rather than superficial appearance—in deciding whom to stop. This shift leads to increased police efficiency, as the following comparative case study indicates. These results can only be achieved when police managers and supervisors buy in to the value of stop forms; in other circumstances, high rates of disproportionality can persist despite the use of stop forms as can be seen in the UK, where practices have varied widely between policing districts and over time despite the use of nationally mandated stop forms.

HUNGARY AND SPAIN

Reducing Ethnic Profiling through the Introduction of Stop Forms

In January 2007, the Open Society Justice Initiative worked with police forces and civil society groups in Hungary and Spain to monitor police use of stops. The Strategies for Effective Police Stop and Search (STEPSS) project assessed existing policy and practice, designed forms and operational guidance for recording stops, trained officers and community members in their use, and collected stop data for six months in pilot sites in each country. (Please see Appendix A for the Hungarian stop form.) Local community consultation groups worked closely with police throughout.

The stop data showed that police in every country were engaged in ethnic profiling: stopping and searching persons of ethnic minority and immigrant origin at disproportionate rates. Minorities and immigrants were more likely to be stopped, often more likely to be searched, but, almost without exception, were no more likely to be found to be offending than the majority group. In some cases, they were far less likely to be offending than ethnic majority residents.

In Hungary, Roma were three times more likely to be stopped by police than non-Roma, but the rate at which Roma and non-Roma were detected in the commission of an offense was almost identical. The stop data clearly showed that Hungarian

officers' stops are not detecting crime: only one percent of their stops lead to a full arrest, three percent to a short-term arrest (e.g. to verify identity) and 18 percent to petty offense procedures being instigated (a broad category of minor administrative infractions and misdemeanors). In sum, large numbers of people were inconvenienced by police stops with little result, and those people were disproportionately Roma.

In Spain, some ethnic groups were stopped more than others, but all were stopped more, and sometimes far more than white Spaniards.¹⁵¹ In Girona, the municipal police stopped Moroccans 6.7 times more often than Spaniards, and Romanians 10 times more often. Yet they only detected offenses in nine percent of stops of Moroccans compared to 17 percent of stops of Spaniards and 19 percent of stops of Romanians. The Mossos d'Esquadra (the regional police that also patrols Girona) not only stopped ethnic groups more often (Romanians 6.1 times more often, and Moroccans 10 times more often than Spaniards), they also went on to search ethnic minorities at disproportionate rates (70 percent of Moroccans and 77 percent of Romanians compared to 52 percent of Spaniards). The overall picture was one of disproportionate treatment of ethnic minority groups with little or no basis in greater police efficiency.

The data also clearly showed that specific operations and types of deployment led to more ethnic profiling. Operations that give officers greater discretion to stop people increase disproportionate stops of minorities. Requiring officers to gather stop data and, in doing so, to record their grounds—or the reason for suspicion—for the stop, reduced discretion and increased the effectiveness of officers' use of stops. In both Hungary and Spain, officers tended to make fewer stops over the period that they were required to record stops, but the proportion of their stops that produced an arrest or other law enforcement outcome increased. When officers have to develop clear and individualized grounds for stops, and when their supervisors hold them to account, they are more effective.

In Fuenlabrada, the second Spanish pilot site, the municipal police had similar rates of disproportionality as Girona at the start of the project. But over the six months of the pilot project, they reduced the disproportionality in the rate at which they stopped persons of immigrant origin. Furthermore, the total number of stops fell by well over half, while the percentage of stops that produced positive outcomes increased by nearly three times. By making better use of data, the Fuenlabrada police became more efficient: they made fewer stops, but the stops were more effective. Fuenlabrada's police managers and supervisors achieved these remarkable results by making systemic use of the STEPSS data both for closer supervision of individual patrol officers and in force-wide management of operations and personnel deployment. The data enabled them to factor disproportionate ethnic impacts into their strategic decision-making and reduce unfair policing while enhancing efficiency.¹⁵² Importantly, these results have been sustained over time in Fuenlabrada.

As the above examples indicate, data can play a key role in assessing the effectiveness of law enforcement operations like identity checks and stops and searches, and their impact on specific groups. Such data can also support improved targeting of the use of these powers. Studies indicate that in order to be effective, police should target stops based on up-to-date intelligence on current crime patterns, observations of objectively suspicious behavior, and police-community dialogue.¹⁵³ High discretion stops, such as the preventive searches in the Netherlands (examined below), tend to have a low productivity rate and often have a disproportionate impact on ethnic minorities.¹⁵⁴

NETHERLANDS

Study of Preventive Stop Powers

A 2005 Dutch study of the efficiency of preventive searches for weapons in eight Dutch cities examined data from 187 preventive search operations conducted from 2002 to 2004 in the cities of Amsterdam, Maastricht, Haarlemmermeer, Den Helder, Rotterdam, Heerlen, Utrecht, and Tilburg. The study recorded the cost of the policy in terms of officer-hours and resources.

During these operations, 79,499 persons were searched and 2,010 weapons were found, of which 68 percent were stabbing weapons, 16.8 percent striking weapons, and 2.6 percent firearms.

Overall, the study found that the searches disproportionately targeted minorities and that for every 1,000 people searched, 25 weapons were detected—and this figure was somewhat inflated by the inclusion of items such as penknives.¹⁵⁵ The cost in terms of police hours spent was extremely high—54 operations in Amsterdam took nearly 12,000 hours of police time; resource costs were similarly high for equally limited results in Rotterdam.¹⁵⁶ The amount of police time dedicated to these operations—and the low rate of success—show why such large-scale, high-discretion actions are ineffective: they foster ethnic profiling while largely failing to uncover crime.

Sharing Data with Communities

It is a core principle in gathering statistical ethnic data for law enforcement that the results should be made public. Particularly given ongoing concerns in many ethnic minority groups regarding the use and potential abuse of ethnic statistics, it is essential that ethnic monitoring systems be introduced with the knowledge, consent, and pref-

erably participation of all stakeholders—minority communities and the general public, as well as the law enforcement agencies involved.

Each year, the United Kingdom publishes national stop and search statistics, including data from all 43 police forces in England and Wales. This has focused political and media attention on the issues of ethnic disproportionality in stops and searches, while also enabling comparisons between different police forces and agencies. At the local level, data can be used a basis for community meetings and dialogue. Having the data available at a local level in Fuenlabrada, Spain allowed an honest discussion between the police and the public regarding patterns of policing, security trends, and law enforcement effectiveness. It ultimately resulted in the cancelling of an operation which was having a disproportionate impact on one community with no demonstrable operational effect.¹⁵⁷

UNITED KINGDOM

Section 95 Data

Since 1992, the United Kingdom's Home Office and Ministry of Justice have published statistical information on how members of the black and ethnic minority (BME) communities in England and Wales are represented in the Criminal Justice System. This reporting is required under Section 95 of the Criminal Justice Act 1991. The reports are published annually and are available on the internet. They analyze the position of BME communities as victims, suspects, offenders, and practitioners in the criminal justice system, and help law enforcement and judicial authorities avoid discrimination on the grounds of race or ethnicity.

The annual reports include a section on stops and searches, which looks at the total numbers of stops and searches, the rate of stops and searches per thousand of the population, the reasons for stops and searches, and the number of arrests that resulted from the stops and searches. Each variable is disaggregated by geographic area, self-defined and officer-defined ethnicity, and the legal power used.

In addition to monitoring through data gathering using stop forms, relevant data can be obtained through periodic examination of police data or through special studies. In Slovenia, for example, the Office of the United Nations High Commissioner on Refugees (UNHCR) has contracted researchers to examine asylum decision-making, looking at issues such as why no Chechens have received refugee status in Slovenia. In Austria, the UNCHR is undertaking a research initiative to analyze first-instance decision-making in asylum cases.

Research Approaches and Methodologies

Both quantitative and qualitative data are needed to address ethnic profiling fully. Quantitative data can be used to determine the extent of the practice, while qualitative data can illuminate differences in the experience of being stopped, searched, questioned or arrested. A range of research methodologies are available.

This section of the handbook explores secondary research, observational studies, general population surveys, mixed methodological studies, and media analyses. The strengths and weaknesses of each approach are examined, and case studies illustrate the type of information provided through each research approach. In practice, each research approach provides specific insight into the nature of ethnic profiling practices, and an in-depth analysis of ethnic profiling would ideally use a mix of these methodologies.

Secondary Research

Where ethnic data are available, primary research using qualitative and quantitative methodologies is desirable to determine the extent, nature, and impact of ethnic profiling. But where there are no ethnic statistics, police data, or other primary research, secondary desk research is valuable for identifying and understanding patterns of ethnic profiling. Secondary research gathers together existing information, and can help to explore what further research is needed and how it can be undertaken. A range of sources can be reviewed including international, national, and local NGO reports; reports of regional reporting bodies such as European Commission on Racism and Intolerance (ECRI), United Nations Committee on the Elimination of Racial Discrimination (CERD), and others; national non-discrimination and police oversight bodies, including parliamentary committees; academic research; and police data and reports, where these are relevant and available. Many of these approaches were used by members of the European Network Against Racism, as described in the following case study.

BELGIUM, GERMANY, AND ITALY

European Network Against Racism Supplemental Reports on Ethnic Profiling

In May 2010, the European Network Against Racism hosted general training session on researching racism and discriminatory practices as part of their on-going documentation for their yearly shadow report process.¹⁵⁸ Shadow reports are not a scientific study, but a compilation of information and data collected by its member organizations, a network of NGOs working on anti-racism. These reports are produced to fill

the gaps in official and academic data, to offer an alternative to that data, and to offer an NGO perspective on the realities of racism. The 2010 training was intended to encourage further research on ethnic profiling, document trends, and explore how primary research might take place.

This has resulted in three reports on ethnic profiling in Belgium, Germany, and Italy based on secondary research compiling existing research, media coverage and information on ethnic profiling and stakeholder interviews with law enforcement officials, NGOs and community representatives, where possible.

The Belgian report includes perspectives on ethnic profiling and the evolution of police relations with minority communities from both community members and legal experts. It also points to the impact of racist attitudes by police when these are revealed by high-profile incidents.¹⁵⁹ The report on ethnic profiling in Germany describes minority community perceptions of ethnic profiling resulting from raids and stop-and-search practices by police in several German states, and reports on raids of Muslim businesses and the monitoring of mosques and Muslim institutions in the context of counter-terrorism.¹⁶⁰ The Italian report highlights the trend of increasing xenophobia in national and local politics, particularly Northern Italy and attribution to local authorities of new powers over law enforcement. These trends are driving increased ethnic profiling of Italian minorities through mass ID checks on trains and buses, and house-by-house inspections and raids of shops run by residents of foreign origin.¹⁶¹

Observational Studies

Observational studies attempt to observe the number of people and their ethnicities in public spaces such as highways, city centers, or train stations to provide benchmark population data—a baseline of the people available to be stopped by the police in a given context. This information is then compared with data on numbers of stops in the same locations to determine whether the people actually stopped are chosen on a racial or ethnic basis, which would amount to ethnic profiling. Some studies go further and also observe police stops, recording the number of people stopped, their ethnicity, age and gender, and sometimes other variables such as style of dress. Observational studies can use trained observers located at fixed points, or can review closed circuit television (CCTV) or other film images to categorize and record pedestrians or drivers. Observational studies provide crucial data in situations where there are no ethnic data or police records of activities available.

Observational studies were pioneered in the United States to provide statistical information for court cases challenging ethnic profiling on state highways. In a landmark case, a New Jersey court relied on statistical evidence obtained through an observational study of drivers on the New Jersey Turnpike to determine that the New Jersey State Police were engaging in ethnic profiling.¹⁶² The study revealed that although only 13.5 percent of all drivers on the highway were black, blacks constituted 37.4 percent of those stopped; that is, black people were 4.85 times more likely to be stopped than whites. Observational analysis is now widely accepted in the United States as a reliable tool for measuring ethnic profiling. Court cases in the US using observational studies have established a threshold for determining when ethnic profiling is taking place. If stops are being conducted equally against all ethnic groups, the ratios would be 1.0, indicating that blacks are no more likely to be stopped than whites. Odds ratios between 1.0 and 1.5 are most likely benign but when the odds ratio is greater than 1.5 it is likely that ethnic profiling is taking place and ethnic groups are being targeted for police stops.¹⁶³

It is important to bear in mind that observational studies are expensive to conduct and have never been used to provide trend analysis (which would require repeated studies at set intervals of time to illustrate changes in police practices), create annual statistics, or as a basis for ongoing monitoring of policies designed to reduce ethnic profiling. Rather, they provide an important snapshot for determining disproportionality at a given time and place. The following three case studies show how observational studies have been used to measure the extent of ethnic profiling when ethnic data were not available.

RUSSIA

Ethnic Profiling in the Moscow Metro

In 2006, the Open Society Justice Initiative, in partnership with JURIX and Lamberth Consulting, undertook an observational study of ethnic profiling by the police in the Moscow Metro system.¹⁶⁴ Stations where observers could clearly monitor stops were selected for observation. Monitors were trained to visually categorize people into simple ethnic categories (“Slavs,” “minorities” and “other”). Observers monitored specific locations at randomly selected days and recorded a benchmark of 33,760 persons at those locations. Finally, monitors observed police stops, recording ethnicity, sex and age. Where possible, individuals stopped by the police were interviewed by the observers to determine their perceptions of the encounter with the police.

The study found that persons of non-Slavic appearance made up only 4.6 percent of the riders on the Metro system but accounted for 50.9 percent of persons stopped by the police at Metro exits. On average, non-Slavs were 21.8 times more likely to be stopped than Slavs. In one station non-Slavs were 85 times more likely to be stopped by the police. These are extremely high levels of ethnic disproportion and cannot be explained on non-discriminatory, legitimate law enforcement grounds. The study also found that in the vast majority of instances, the police simply released those who they had stopped. The study concluded that only 3 percent of police stops on the Metro resulted in the discovery of administration infractions such as the possession of improper documents.

FRANCE

Ethnic Profiling in Paris

In 2007, the Open Society Justice Initiative, in collaboration with France's National Center for Scientific Research (Centre National de la Recherche Scientifique) and Lamberth Consulting conducted an observational study of police stops at five locations in central Paris. The study gathered data on 525 stops at different locations known for having a high level of police activity. The study also gathered benchmark data for over 32,000 persons at the same locations.¹⁶⁵

As in Moscow, the study compared the population available to be stopped by police with the population actually stopped by the police. Both the benchmark data and the stops were categorized according to perceived ethnicity, age, gender, clothing, and the type of bag carried. In observing stops, monitors also recorded the outcome of the stop and, where possible, conducted a brief interview with the person who had just been stopped to find out how often they experience police stops, record their assessment of the officers' behavior during the stop, and obtain a statement of their reaction to being stopped.

The study confirmed that police stops and identity checks in Paris are principally based on the appearance of the person stopped, rather than on their behavior or actions. Persons perceived to be black or Arab were stopped at proportionally much higher rates than whites. Blacks were overall six times more likely than whites to be stopped by police and Arabs were 7.6 times more likely than whites to be stopped by the police (specific rates of disproportionality varied among sites). Follow-up interviews with the individuals who were stopped also suggest that these two groups regularly experience far more police stops than whites.

The study revealed that in addition to ethnic appearance, clothing is an important factor in police stops. Although people wearing clothing associated with French youth culture (described as “hip-hop,” “techno,” “punk,” and “goth”) made up only 10 percent of the population available to be stopped by police, they made up 47 percent of those who were actually stopped. The study revealed a strong relationship between the ethnicity of the persons stopped, the style of clothing they were wearing, and their propensity to be stopped for police checks and identity control: fully two-thirds of the individuals dressed in “youth clothing” were also classified as belonging to a minority ethnic group. It is likely that police consider both belonging to an ethnic minority group *and* wearing “youth clothing” to be closely tied to a propensity to commit crimes or infractions.

UNITED KINGDOM

Profiling Populations “Available” for Stop and Search

The United Kingdom’s Home Office’s Policing and Reducing Crime Unit carried out a series of research studies on police stops and searches in 2000. The results were published in six reports each focusing on a different aspect of stop and search.¹⁶⁶ Researchers identified zones of high stop and search use and then attempted to profile the numbers and characteristics of people in those zones. A number of vehicles were equipped with discreet video cameras to view pedestrians and vehicles. For each area, two sets of three 8-hour shifts were devised and drivers were required to follow a specified route at specific times. In total over 20,000 pedestrians and nearly 50,000 drivers were filmed and data on their age, gender, and ethnic appearance subsequently extracted from the footage.

The data showed that residential population figures did not represent populations actually “available” to be stopped and searched. In areas of high stop and search activity, young men and people from ethnic minority backgrounds tended to be over-represented in the “available” population. The research also explored whether varying levels of stop and search between areas were justified by the different levels of crime in these places. Overall, the results suggest there is a fair degree of consistency between the patterns of crime and the patterns of stops and searches. But in some areas the levels of stop-and-search activity could not be justified due to the relatively low levels of crime.

Several research studies in the United Kingdom have subsequently used versions of this methodology. A study in the Thames Valley found that the black and Asian population available to be stopped and searched was higher than the residential

population would suggest, and that they were not stopped in disproportionate numbers.¹⁶⁷ A study of eight locations (four related to pedestrian stops and four to vehicle stops) covered by the City of London Police again found that the available population was very different from the residential population. Researchers found that there was no disproportionality in stops on vehicles but some evidence of disproportionality in stops of black pedestrians; they made up nine percent of the “available” population, but accounted for 13 percent of all stops.¹⁶⁸

Observational studies have been controversial in the United Kingdom, on methodological grounds with certain approaches and because some observational studies challenge the conclusions of both quantitative and qualitative studies that consistently find that ethnic minorities are disproportionately stopped and searched. The methodology issues reflect the focus on areas of high stop-and-search use. Critics note that stop and search “hot spots” reflect police operational decision-making that may be influenced by stereotypes, thus establishing a self-perpetuating cycle whereby high crime rates appear in police statistics because of higher intensity police actions in those areas, which then justifies further police action. But these issues also flag the need to conduct observational studies in areas where stop-and-search tactics are used to a lesser degree. Evidence from the London Borough of Lambeth shows that disproportionality is higher in areas where stop and search is used less frequently.¹⁶⁹

Survey Data

Surveys can provide both quantitative and qualitative information about different communities’ encounters with law enforcement. Household and general population surveys are a standard instrument for measuring public experiences of crime and policing, and have recently started to be used to address ethnic profiling. Survey data can focus solely on ethnic profiling, or questions relevant to ethnic profiling can be introduced into a broader survey such as a victimization survey.

A number of problems are attached to surveys, including the cost, issues of recall, and whether what is being reported is an accurate reflection of individuals’ own experience or results from general perceptions of the group or communities’ experiences of policing. Surveys on ethnic profiling also need to ensure that the sample enables comparison between the experiences of different groups in population—both minority groups and the comparator majority population. Survey methods must assure that statistically valid numbers of persons from target groups are interviewed.

Regular victimization surveys are conducted throughout EU member states, although they do not generally include ethnic data. Such surveys commonly include questions on victimization, crime reporting, satisfaction with law enforcement

responses, and in some cases, broad questions addressing trust and confidence in public institutions including law enforcement agencies. In 2011 and 2012, the “Eurojustis survey” was conducted in 26 countries across the EU and included questions on trust and legitimacy of law enforcement and the courts.

Surveys can also include questions designed to capture individuals’ experiences with law enforcement such as when the person last had contact with law enforcement; whether that contact was initiated by the civilian or the officer; what the outcome was; the conduct of the encounter; and the persons’ satisfaction with the encounter.¹⁷⁰

The London Metropolitan Police Service (MPS) undertakes a number of public opinion surveys to assess public concerns about crime and satisfaction with police action. The largest survey is the MPS Public Attitudes Survey (PAS), which collects data annually from around 20,000 individuals using face-to-face interviews with a representative sample of Londoners. This survey has included a booster sample of 1,000 men aged 18–30 from minority ethnic backgrounds, asking questions focused on issues around stops and searches, procedural justice, and police legitimacy.

In 2010, the EU Fundamental Rights Agency released the results of a survey on minorities’ experiences of policing in the European Union. The study, described in the case study below, also examined experiences of police treatment and perceptions of ethnic profiling.¹⁷¹

AUSTRIA, BELGIUM, BULGARIA, ITALY, ROMANIA, AND SLOVAKIA

FRA Survey on Minorities’ Experiences of Law Enforcement

Seeking to address the current lack of ethnic data in EU victim surveys, the FRA initiated surveys designed to assess ethnic minorities’ experiences of victimization and law enforcement. In 2006-2007, the FRA undertook a pilot victim survey of ethnic minorities in Austria, Belgium, Bulgaria, Italy, Romania, and Slovakia.

The FRA survey included questions on respondents’ experiences of being stopped by the police. Ethnic minorities in Italy reported very high rates of pedestrian stops, as did the Roma surveyed in Bulgaria, Romania, and Slovakia. Stops rarely resulted in arrests, regardless of ethnic group or country location. In fact, across the whole sample less than one percent of those stopped were then arrested. In all countries, Roma reported the most negative experiences of stops. They reported that they had been stopped because of their minority status, and that they were treated worse than the majority population. Ethnic minorities in Italy reported similar negative feelings. Roma and ethnic minorities in Italy also tended to be the least likely to report being satisfied with their experience of being stopped.

The ability of such surveys to draw any definitive conclusions about the existence and extent of ethnic profiling practices depends on whether there are comparator majority population groups against which the experience of minority groups can be compared and assessed.

Not all surveys are large-scale and high cost. Smaller surveys can also be targeted to specific groups and issues. The Irish and American case studies below show how surveys may be used to identify the experiences with law enforcement of specific ethnic groups and assess what kinds of problems may exist.

IRELAND

Attitudinal Survey of Traveller and Ethnic Minority Communities

Between December 2006 and May 2007, the Garda Research Unit conducted a Traveller/Ethnic Minority Communities Attitudes Survey (TEMCAS) focused on satisfaction with Garda service, policing priorities and experiences, and fear of crime. The survey was conducted through face-to-face interviews and postal questionnaires. Just over 600 interviews were completed with approximately 200 interviews among each of the following groups: Travellers, migrants, and asylum seekers and refugees.

Although it was not a principle focus of the TEMCAS, the survey inquired about ethnic profiling practices. One question asked was: “Has a Garda ever behaved towards you in a way you consider unacceptable?” Respondents were then asked to specify the nature of any unacceptable behavior amongst a list of possibilities, including: “stopped or searched without reason;” “harassed;” “discriminated due to age, gender, race or ethnicity;” “searched house without reason;” and “made wrongful accusation.” Forty-three percent of Travellers, 12 percent of asylum seekers and refugees, and six percent of other migrants reported that a Garda had behaved in an unacceptable manner. Of all such incidents reported in the survey, six percent involved stops and searches “without reason;” six percent harassment; 12 percent discrimination due to age, gender, race, or ethnicity; seven percent house searches “without reason;” and nine percent wrongful accusations.¹⁷² Unfortunately, the survey has not been repeated, so it is not possible to determine whether these attitudes have changed over time.

Attitudinal Survey of Young New Yorkers

The Polling for Justice project at the City University of New York, recently conducted two surveys on the stop, question, and frisk experiences of 1,100 New Yorkers between 14 and 21 years old in 2008 and 2009.¹⁷³ A group of youth and adult researchers developed the questionnaires and distributed them through their own networks and those of community organizations. The research was not based on a demographically representative random sample but attempted to reflect the racial, ethnic, and socioeconomic differences among city public high school students across the city's boroughs.

Nearly half of the young people reported having negative interactions with police in the previous six months. Just 20 percent said they would feel comfortable going to the police if they needed help. Young people who reported negative experiences with police were likely to have had several interactions with the police over the previous six months, with more than 40 percent reporting three or more stops. Among respondents who reported negative contacts with police, just 31 percent said they felt protected by police, and only 16 percent said they would turn to police if they were in trouble. Twelve percent of the survey participants reported unwanted sexual attention from the police during searches and lesbian, gay, bisexual youth were significantly more likely to have experienced negative interactions with police (61 percent) than young people who identified as straight (47 percent).

Qualitative and Mixed Methodological Studies

Quantitative studies provide a picture of the extent of ethnic profiling and where it is happening. Qualitative research enables a detailed exploration of police working practices, drawing on subjective experiences and the perceptions of both operational law enforcement officers and those who are the subject of their operations.

The most comprehensive and richest understanding of ethnic profiling will be derived from a mixed-methodological approach that generates a complementary set of quantitative and qualitative data. Mixed methodologies offer the best means of understanding not only what is happening (the dimensions of ethnic profiling) but also why it is happening (the habits and attitudes that underlie profiling).

In the United Kingdom, the Home Office's Policing and Reducing Crime Unit carried out a series of research studies on stop and search in 2000. The research utilized a mixed methodology: analyzing stop and search statistics, reviewing existing literature,

conducting interviews with over 90 officers, and 340 hours of observation of operational police officers at work. The results were published in six reports, each focusing on a different aspect of stops and searches.¹⁷⁴ The results provide important insights both into the impact of stops and searches and into the highly subjective nature of individual officers' decision-making processes about whom to stop and search. Interviews with members of the public illustrated their perceptions and experiences of stop and search. Results of two of these reports are summarized in the following case studies, the first casts light on officers' subjective decision-making, while the second illustrates the experience of the people stopped by police and public attitudes toward the use of stop and search.

UNITED KINGDOM

Police Stops and "Reasonable Suspicion"

The Home Office's Policing and Reducing Crime Unit carried out a series of research studies on stop-and-search practices in 2000. The results were published in six reports, each focusing on a different aspect of stop and search. Researchers conducted interviews with 90 operational officers to explore how officers make the decision to stop and search people. The results identify a range of factors that inform officers' suspicion, including the working rules or assumptions that may underpin police practice.¹⁷⁵

The research showed that officers had vastly different understandings of how to operationalize the concept of "reasonable suspicion." Officers' suspicions were aroused by age, appearance (particularly clothing, such as baseball caps and hooded tops), older cars (which are more likely to have vehicle defects), makes of cars which are commonly stolen, expensive cars (particularly when driven by ethnic minorities who they assume would not be able to afford to buy them legitimately), behavior (such as "checking out cars" or avoiding eye contact), the time and place of the encounter (looking "out of place" in a particular area at a particular time) and information and intelligence (as provided by witness statements or crime reports). The result is great variation among officers in their decisions to carry out stops and searches.

The report concludes that officers frequently fail to meet the legal threshold of reasonable suspicion for stops and searches. It also finds that stop-and-search actions are often focused on persons who have had previous contact with the police, or are based on officers' generalizations about people, places, or situations associated with offending.

UNITED KINGDOM

The Views of the Public on Stops and Searches

As part of the Home Office's Policing and Reducing Crime Unit 2000 research studies on stops and searches, researchers interviewed members of the public from a range of different ethnic groups about the experience of being stopped and searched.¹⁷⁶ A stop and search, no matter how cursory, was felt by respondents to be intrusive, embarrassing, and potentially frightening. Those who were regularly stopped felt victimized by the police. This was especially true of black and Asian respondents who felt they were stopped more than white people and that they were being targeted solely due to their ethnicity.

Among the respondents there was general acknowledgement of the value of stops and searches. However, when stops and searches were handled badly by the police, the distrust, antagonism, and resentment that were generated outweighed any of the positive effects it might have. Respondents welcomed the introduction of stop forms and believed that having information in writing about the stop would increase accountability. Respondents also said that a respectful attitude on the part of the office was very important, as was being given a valid reason for the stop and search.

The next case study presents results of a qualitative study examining attitudes of the police and the public in three countries.

BULGARIA, HUNGARY, AND SPAIN

Views of the Police and Public on Stops and Searches

In 2005, research in Bulgaria, Hungary, and Spain,¹⁷⁷ used a qualitative approach based on interviews with 60 to 80 police officers in each country, and focus groups and interviews with Roma minority groups in all three countries, as well as with immigrants in Spain.

Despite the very different national contexts, it was clear that police in all three countries were profiling Roma and immigrants. Roma pedestrians in Bulgaria and Hungary and immigrants in Spain were more likely to be stopped than members of the majority population and, once stopped, they were more likely to have an unpleasant experience. In interviews, officers frequently cited a "sixth sense," or "intuition" or "past experience" as driving their decisions about whom to stop,

sometimes adding factors such as a person appearing “nervous,” or “out of place” or “strange.”¹⁷⁸ The research found that while stops may be called in to headquarters, they were generally not reviewed by line supervisors at local stations, nor were they systematically recorded and assessed in terms of efficiency, meeting operational objectives, or fairness.

Qualitative data can be powerful in indicating whether ethnic profiling is taking place and, and if so, illuminating the factors that abet it. Some qualitative data gathering is complex and expensive. Where resources might not be available to replicate the types of qualitative research described above, more limited approaches can be adopted, perhaps in conjunction with community policing initiatives. The following three case studies provide important examples of an easily-replicated first step in gathering qualitative data.

BELGIUM

Roundtables on Community Policing in Diverse Neighborhoods

In 2006–2007, the Centre for Police Studies organized 11 roundtable discussions in different provinces to examine the practical implementation of community oriented policing in diverse communities. Each roundtable examined police relations with a different segment of society, including Travellers, trailer park residents, and ethnic minorities.

Participants at each roundtable included police officers, community actors who work with the selected segment of society (such as social workers and educators), and representatives of the selected group. In many cases this was the first time these actors had exchanged views about policing. Participants, who were guaranteed anonymity, were then asked to write out a short reflection on the discussion outlining the implications for their work and noting ideas and thoughts that the discussion provoked. The project concluded with a workshop titled “Policing Divided Communities” which brought together project participants to discuss experiences in different provinces, drawing out the implications for community oriented policing.

NORTHERN IRELAND

Beyond the Margins: Building Trust in Policing with Young People

Public Achievement is an NGO working with disadvantaged young people in Northern Ireland to encourage active citizenship. Public Achievement undertook a research study based on a literature review, analysis of over 200 surveys completed by young people, and a review of projects working on policing with young people. Additionally, Public Achievement created a film through interviews with over 200 young people from across Northern Ireland as well as the chief constable, the police ombudsman, and the chairman of the Policing Board. Each participant involved in workshops or interviews was asked to complete the questionnaire and it was also made available online through the Public Achievement website. A total of 212 young people completed the survey between September 2009 and February 2010. Making a film allowed the young people to speak in their own words about their experiences of policing, their views of the police, and their ideas for the future.

The research found that young people feel they are stereotyped by society and that the police often operate based on these societal perspectives. Seventy percent of respondents reported having had some form of contact with the police. The most frequent location of contact was on the street, with a large proportion of respondents reporting experiencing unacceptable police behavior including disrespectful behavior and harassment. A large section of young people also reported having positive engagements with the police through youth clubs and schools. Positive police behaviors including greater professionalism, politeness, and fairness appear to have increased since previous surveys. The research also found that engagement projects can be successful if they are built on trust between the young people and facilitators who are seen to be independent, and involve prolonged and sustained police/youth contact, which fosters increased understandings of one another. Public Achievement is currently working with the Northern Ireland Policing Board to develop training and further research based on the findings.

IRELAND

Singled Out: Exploratory Study on Ethnic Profiling in Ireland and its Impact on Migrant Workers and their Families

In 2010–11, the Migrant Rights Centre in Ireland conducted an exploratory study to gather existing information on ethnic profiling, deepen awareness of the problem, and establish the need for further research to understand the extent and impact of

ethnic profiling.¹⁷⁹ Based on a literature review, small scale observation on buses and trains in Dublin City Centre, focus groups and interviews with migrant workers, and wider population and stakeholder interviews, the report finds evidence of ethnic profiling, examines the impact on migrant workers, and makes a number of recommendations for reform.

The observation found indicators of ethnic profiling practices. This was observed in the street when only Roma were “moved on” for begging, despite other people begging in the same area at the same time. Ethnic profiling was also observed during identification checks on buses with passengers from a visible minority ethnic background but not on buses where there were no passengers from a visible minority background. The focus groups and interviews catalogued perceived incidences of ethnic profiling on buses, trains, and in cars, at airports and ports, and on the street and in other public places. A number of the interviewees and focus group participants discussed the psychological impact of ethnic profiling and frustration at the lack of avenues for redress. Individuals described the experience of being singled out for additional scrutiny in airports as humiliating and embarrassing and reinforcing racist stereotypes. One woman said that it made her feel like an “outsider,” despite having lived in Ireland for many years: “It makes me feel like I can never be part of this community, even though I want to.”¹⁸⁰ Others spoke about feeling “powerless” and unable to complain due to their immigration status. The report recommends strengthening immigration legislation to prevent ethnic profiling, strengthening complaints mechanisms, and conducting further research and monitoring.

Media Analyses

Another approach—in contexts where ethnic statistics, police data, and academic research on ethnic profiling are limited—is a review of media coverage. Media reviews can provide some indications of the location, experience, and scope of ethnic profiling. More complex research methods would include undertaking rigorous content analysis of media coverage, but in its simplest form a review of newspapers, TV news, and social media such as social networking sites and blogs can provide both statistical and qualitative information about ethnic profiling. For example, newspaper stories in Denmark and Sweden provided statistical information about identity checks, as well as interviews with young people stopped by police.

DENMARK

Media Reporting of Police Stop and Search Operations

In February 2008, a series of riots took place in the Nørrebro District of Copenhagen. The national newspaper *Politiken* published interviews with young people under the title: “Declaration: the truth behind the riots.”¹⁸¹ In the articles, young people expressed frustration with frequent police stops and searches, and accused the police of behaving in a “brutal” and “racist” manner and exercising “utterly unacceptable intimidation.” They alleged that the police had forced some young men to undress in public while officers shone flashlights on them, that officers verbally abused a number of young men, and that one police officer conducted repeated stops and searches of the same individuals within a single day. There have since been a number of media reports following the use of police stop-and-search powers in the area.

More recently, Copenhagen police have used special powers that allow police officers to conduct stops and searches without individual suspicion within a defined area or “stop and search zone” in order to prevent violence.¹⁸² Statistics on these operations released by the Copenhagen Police and published in newspapers are strongly suggestive of ethnic profiling. Between September 15, 2008 and January 15, 2010, 9,887 individuals were searched a total of 17,977 times in the “stop and search zones.”¹⁸³ Over 50 percent of those stopped and searched were of non-Danish ethnic origin despite the fact that immigrants or descendants of immigrants make up 20 percent of the population of Copenhagen, Frederiksberg, and Tårnby municipalities (the three municipalities where stop and search zones have been focused).¹⁸⁴ Stops conducted under this power have sparked further violent confrontations between the police and young people and further unrest, albeit on a much smaller scale, broke out in August 2009 in response to police increasing their use of stop-and-search powers.¹⁸⁵

SWEDEN

Swedish Brunch Report Radio Show

The Swedish Brunch Report radio show investigated 500 stops and searches intended to remove weapons from the streets in Uppsala and Malmö and found that the police had only discovered two knives. In an interview that aired on the show, a 17-year old boy explained why he found stops and searches to be humiliating.¹⁸⁶

General principles of good practice in gathering data on ethnic profiling:

- ▶ Qualitative and quantitative data provide an important insight into law enforcement practices and can provide evidence of the extent and experience of ethnic profiling.
- ▶ Qualitative data provide important insights into experiences of ethnic profiling that can support the development of new policies and practices. The most thorough understanding of ethnic profiling will be derived from a mixed methodological approach that combines both quantitative and qualitative research and data.
- ▶ Observational studies may be particularly useful where census data are not available or appear to be inaccurate, or where there is no available law enforcement data and there are concerns about ethnic profiling. They should not be used to justify hot-spot law enforcement policing practices with strongly disproportionate outcomes.
- ▶ While surveys and observational methodologies can obtain quantitative data on ethnic profiling, access to police data is an essential basis for thorough research and analysis and for the generation of sound and practical policy recommendations.

VI. Strategies for Reducing Ethnic Disproportionality and Improving the Quality of Encounters

Ethnic profiling can be reduced by limiting officer discretion in selecting individuals for law enforcement controls and targeting their use of these powers more precisely. There are several approaches to limiting discretion; they are not mutually exclusive but can be used in a complementary manner.

The three strategies examined here are: (a) improving the quality and precision of intelligence, and making sure that officers use intelligence in their decision-making; (b) increasing supervision of law enforcement officers' discretionary decisions; and (c) enhancing civilians' understanding of their rights and responsibilities in encounters with law enforcement and their ability to hold law enforcement accountable for their use of their powers.

The final discussion in this section examines the specific dynamics of encounters between law enforcement and civilians, and civilians' perception of the quality of the experience. Research has shown that the quality of an encounter is as important to individuals as the fact of being stopped in the first place.

Intelligence-based Law Enforcement

When law enforcement actions are based on specific and timely intelligence, they are more likely to be objective and less likely to be based on stereotypes. The development and use of intelligence in targeting operations should both reduce ethnic profiling and increase police effectiveness. Improving the quality and use of intelligence is most effective when combined with increased supervision and monitoring of officers' use of their powers. Officers should be given daily briefings to ensure they have the most up-to-date knowledge of available intelligence and local information on which to base their activities.

There is considerable mystique and confusion around the notion of “intelligence.” In practice, most law enforcement intelligence comes from information and analysis derived from a review of crimes and crime patterns, and information obtained from individuals in local communities. New technologies are increasingly important to many aspects of law enforcement, but this should not obscure the fact that policing, at its heart, depends on public cooperation. Local intelligence is generally derived from regular law enforcement contacts with community residents, reporting by community members, informants, and, more rarely, surveillance and under-cover operations.

The role of intelligence is especially important—and especially complicated in relation to ethnic profiling—in two areas: suspect descriptions and transnational criminal investigations. In both cases, there is a fine line between the legitimate use of intelligence and outright ethnic profiling. A “suspect description” consists of personal information such as skin, hair, and eye color; height and weight; clothing and other information that is derived from descriptions provided by the crime victim or witnesses. A good suspect description can be used by officers as the basis for stops and searches to detain the suspect. However, when law enforcement officers receive an overly general suspect description that features race or ethnicity but lacks more specific identifying characteristics, they should not use that description as the basis for operations such as stops and searches. By using an overly general suspect description, police are likely to stop innocent persons who happen to share the same traits, and risk engaging in ethnic profiling. Instead, they should seek further specific operational intelligence to guide their investigations.

For example, following a series of brutal robberies committed by two “dark-skinned men,” the Vienna police were ordered to stop all black Africans in pairs for identity checks; only when this provoked an outcry did they refine the suspect description to focus on black men, about 25 years old and 170 cm. tall, with slim builds, and wearing light down jackets.¹⁸⁷ The police use of an overly broad suspect description that focused exclusively on skin color is a clear example of ethnic profiling: many innocent

people were stopped and valuable police resources wasted. However, using the more elaborated suspect description that included the suspects' heights and clothing showed proper use of good intelligence.

Investigations of transnational organized crime and terrorism are usually larger and more complex than ordinary criminal investigations, but the basic elements of intelligence are not fundamentally different. The main difference is that fighting transnational organized crime and terrorism requires intelligence-sharing and cooperation between the law enforcement agencies and intelligence services of different countries, and this cooperation is beset by challenges. It is not uncommon for members of criminal gangs to have the same nationality or ethnic background (although they are also known to recruit from outside their group in order to avoid known ethnic profiles). Border guards and customs officers often develop profiles that include these factors to guide their efforts to combat transnational crime. Such uses of ethnicity, national origin, and other personal factors are entirely legitimate as long as they are based on reliable and up to date intelligence, and are used in a properly targeted fashion.

The following case study shows the importance of using intelligence in determining stops and searches. Specifically, it illustrates how one law enforcement agency's shift from focusing on superficial characteristics such as national origin to a more intelligence-driven approach resulted in fewer—but more effective—stops and searches.

UNITED KINGDOM

Ending Ethnic Profiling Enhances Effectiveness

In 1998, 43 percent of searches that the US Customs Service performed were on blacks and Latinos, although blacks and Latinos made up a much smaller proportion of all travelers. A particularly large number of searches, including highly invasive x-rays and strip searches, were carried out on Latina and black women suspected of being “drug mules” based on a profile that relied heavily on nationality and ethnicity. The hit rates for these searches was low across all groups: 5.8 percent for whites, 5.9 percent for blacks, and 1.4 percent for Latinos; and was particularly low for black and Latina women, who were in fact the least likely to be carrying drugs on or in their bodies. In 1999, Customs changed its procedures, removing race from factors to consider in making stops and introducing observational techniques focusing on behaviors such as nervousness and inconsistencies in passenger narratives, using more intelligence information, and requiring closer supervision of stop-and-search decisions. By 2000, the racial disparities in these searches had nearly disappeared. The number of searches carried out dropped by 75 percent, and the hit rate improved from less than five percent to over 13 percent, and became almost even for all ethnic groups.¹⁸⁸

Intelligence is generally provided to officers at daily briefings before each law enforcement shift. The briefings generally discuss crimes that have recently taken place, noting “hot spots” or persons of interest that officers should be looking for. Providing timely and detailed intelligence to officers during these briefings should reduce discretion and provide officers with guidance on how to target their powers more specifically on current crime patterns and identified safety issues.

It is especially important to use high-quality intelligence to inform the use of more intrusive law enforcement powers such as arrests, searches of homes or business premises, raids, surveillance and other forms of electronic monitoring. For such operations, judicial oversight can play an important role in considering whether the legal grounds for the action have been established—notably that the evidence warrants the action on its merits and meets the standard of proportionality.

In the Netherlands, judges set strict limits on the use of intrusive law enforcement powers, respecting in particular the principle of proportionality, that is, that the law enforcement action must be necessary and reasonable with regard to the specific operation objective (discussed further in Appendix B). Proportionality is decided based on the facts of each case as the following Belgian case study demonstrates.

BELGIUM

Judicial Control of the Use of Special Investigative Techniques

Before Belgian law enforcement officials may make use of special investigative techniques such as surveillance, a magistrate examines the file and assesses the following elements:

- a) **Legality:** Does the crime fall into the specific categories of crime for which the use of these techniques is permitted?
- b) **Subsidiarity:** Did police use all resources at their disposal to find elements of the crime before making use of special techniques?
- c) **Opportunity:** Is it the right point in the investigation to use this technique?
- d) **Feasibility:** Is there a good chance of success?

Investigative techniques that infringe on privacy and other personal rights are subject to judicial authorization. A senior Belgian counter-terrorism official stated that the requirement of judicial approval has prevented counter-terrorism raids on mosques in Belgium. Such raids must be authorized by an investigating magistrate, who will

only do so if the measure is determined to be a proportional. The official said that in several cases the police, prosecutor, and investigating magistrate debated requests to conduct raids. The examinations considered the broader implications of any raid, including its impact on the Muslim community, and determined that they were not proportionate in the circumstances.

Finally, where good intelligence exists, it should be shared among law enforcement agencies and used in a systematic manner. Two case studies from the United Kingdom describe initiatives developed to systematize, integrate, and share intelligence more effectively.

UNITED KINGDOM

National Intelligence Model

The National Intelligence Model (NIM) is an intelligence-led approach to policing which applies basic minimum standards in all areas of policing, including the United Kingdom Border Agency. NIM is essentially a “business model” that assists in organizing information and intelligence to support resource deployment decisions, coordination of actions within and between different levels of policing, and learning lessons and providing feedback into the system. The NIM emphasizes three key factors:

- a) The development and analysis of intelligence to provide deeper understanding of crime trends and identify priorities.
- b) Effective decision-making guided by identified priorities. Resources and information gathering activities are coordinated and directed towards the most significant threats to the public.
- c) The results of each activity are evaluated and fed back into the system, building on existing intelligence, increasing the police’s ability to tackle identified problem areas and facilitating the assessment of police priorities.

The NIM supports effective policing by optimizing law enforcement decision-making and use of resources. It also facilitates the flow of information across three levels: tackling local issues (Level 1); cross force or boundary issues (Level 2); and national or international issues—serious and organized crime (Level 3).¹⁸⁹

Border Agency Harm Scoring Matrix

The work of the United Kingdom Borders Agency (UKBA) is governed by the Equalities Act 2010. The Enforcement and Removals Directorate of the UKBA is responsible for the investigation and removal of people who have no legal right to stay in the UK. In order to prioritize their work and ensure that decisions are not based on race, ethnicity, or nationality, the UKBA uses a harm scoring matrix to prioritize investigations and enforcement. When agents receive intelligence about a possible breach of immigration rules, they feed the information into a software system that scores the intelligence. The system examines whether the person identified fits into the priority areas through a series of weighted questions such as:

- Has the person breached the immigration rules?
- Has he committed a criminal offense?

The system ranks immigration offenses and offenders, and those persons identified with higher harm scores are prioritized for removal. It thus takes the discretion out of decision-making and reduces the possibility of ethnic profiling.

General principles of good practice in intelligence-based law enforcement:

- ▶ Judicial review and authorization should be required for the use of intrusive police powers such as raids and surveillance. Review should assess the evidentiary basis, proportionality and necessity of the proposed action.
- ▶ Intelligence must be regularly reviewed and updated. Sensitive personal factors should only be used to direct law enforcement when they form part of a reliable, specific, and up to date suspect description or intelligence profile.
- ▶ Intelligence should prioritize behavioral factors over ethnic or nationality-based profiles.
- ▶ Officers should be given clear guidance in using intelligence in planning identity checks and stops and searches.
- ▶ Officers should be given daily briefings to ensure they have the most up to date knowledge of available intelligence and local information on which to base their activities.
- ▶ Identity checks and stops and searches should be monitored through gathering statistical ethnic data to determine whether these powers are disproportionately targeting minorities and whether they are being used effectively.

Supervision and Oversight of Front-line Officers and Law Enforcement Operations

In law enforcement, the lowest-ranking officers have most frequent interaction with civilians, often on the basis of highly discretionary decisions made with little or no direct supervision or oversight. Holding officers accountable for the choices they make in the use of their powers requires appropriate forms of monitoring and feedback. Research indicates that day-to-day management and supervision is a key influence on officers' behavior.¹⁹⁰

One of the most effective ways to assure that police powers are used in a fair manner is to focus routine management and supervisory practices in areas where ethnic profiling is a concern. When law enforcement management and supervisors make clear that non-discrimination is a core value of policing, and implement this through monitoring and supervision of the use of discretionary powers, officers adjust their behavior accordingly.

As discussed in Chapter V, collecting and analyzing ethnic data facilitates supervision of officers' use of discretionary law enforcement powers such as stops and searches. This provides a paper trail that can be reviewed on a regular, even daily, basis to determine whether ethnic profiling is taking place and to assess the effectiveness of officers' actions. The following case study of Fuenlabrada demonstrates the effects of supervision based on data gathering.

SPAIN

Using Stop Data in Supervision and Management

In Fuenlabrada, Spain, the municipal police achieved both a dramatic reduction of disproportionality and an increase in positive outcomes of stops and searches by making systemic use of stop forms to monitor individual patrol officers and analyze operations and personnel deployment.¹⁹¹ (Please see Appendix A for the Fuenlabrada stop form.) The data enabled them to factor disproportionate ethnic impacts into their strategic decision-making and reduce unfair policing while enhancing efficiency.

Sequentially numbered forms allowed every stop to be traced to an individual officer. The forms recorded the reasons for the stop and the type of stop, as well as data on the person stopped and on the outcome of the stop. The data on the type of stop and reason for it allowed senior officers to supervise individual officers' use of stops more closely and required that officers be as specific as possible about the reasons

for their suspicion, reducing their tendency to rely on “suspicious behavior or attitude” as grounds and “other” as the type of stop. These demands, combined with the scrutiny of the ethnic data, required officers to think much more carefully about who they were stopping and why. It led to a significant reduction in officers’ use of stops (by roughly half) and a tripling of the hit rate.

Police managers also used the stop data to assess the productivity of specific operations. In the case of a counter-terrorism operation that consisted primarily of stopping individuals at the train station, they found that the identity controls and stops and searches were producing highly disproportionate stops of Moroccans and no positive results in terms of arrests or citations. During the operation, persons of Moroccan origin were being stopped 9.6 times more often than white Spaniards; once it was ended, this ratio went down to 3.4 to 1.

Where using stop forms to collect ethnic data is a routine practice, officers become accustomed to it and, arguably, the impact on their behavior may diminish over time. Such habituation can be addressed by a continued emphasis on non-discrimination and continued scrutiny of possible ethnic profiling. In the United Kingdom, the Police and Criminal Evidence (PACE) Act Code of Practice places a statutory duty on supervisory officers to monitor the use of stop and search powers, considering in particular: “whether there is any evidence that they are being exercised on the basis of stereotyped images or inappropriate generalisations.”¹⁹² The code recommends that supervisory officers examine the stop records to identify any trends or patterns that give cause for concern; it calls for such monitoring to be supported through the compilation of statistical records of stops and searches by every police service. In practice, British police services vary considerably in the degree and spirit in which they implement these requirements.

The case studies below show that stop forms not only provide a key measure of ethnic profiling, but also have added value in the supervision of individual officers, management of teams and areas, and decisions about operational tactics. The manner in which stop data are gathered also has a bearing on its ease of use for management purposes. When officers are required to use paper forms, it is common practice for the forms to be checked at the end of each shift by supervisors who will assure that stops are being recorded fully and have been conducted within the law; this supports close supervision. However, supervisors also need regular statistical information to highlight patterns and trends within their teams; such statistics should be broken down by individual, team, and area to allow comparison. Computer programs generating regular statistical analysis provide objective evidence of patterns that must be explained or corrected if they demonstrate disproportionality.

This is not to say that stop forms are the only tool to address ethnic profiling through supervision. Officers have further tools at their disposal, most critically the decision about appropriate and proportionate operational responses to crime reports and other problems, and the use of briefings based on intelligence and crime analysis to provide specific guidance to officers and take into account local needs and sensitivities. The following case study outlines one of the most advanced initiatives.

UNITED KINGDOM

Computerized Monitoring of Individual Officers' Stops in Hertfordshire¹⁹³

The Hertfordshire Constabulary's statistics showed that they conducted 43,326 stops and 11,511 stops and searches in 2006–7,¹⁹⁴ a relatively low number compared with other United Kingdom police forces. Yet the data showed that black people were five times more likely, and Asian people 1.8 times more likely, to be stopped and searched than white people. Senior officers recognized that supervising officers were not getting the information and training they needed to identify and address disproportionality. The relatively low rate of stops and searches made it hard for supervisors to identify disparities and, without statistical evidence, supervisors were reluctant to challenge officers for fear they would feel they were being accused of racism.

In April 2007, the force introduced new stop forms. Supervisors were required to check these forms at the end of every shift and scan them into a database (open to all officers on the police intranet). Supervisors generated a statistical picture of the use of stops by individual officers and teams. In early 2008, the force developed a specialized computer program that identified whether officers are stopping a statistically disproportionate number of ethnic minorities, based on the population composition of each beat area and the time of officers' shifts. (Previously, disproportionality was determined by measuring the percentage of minorities stopped with their percentage in the local residential population. Officers would justify disproportionate patterns by saying that they took place in areas with large minority populations.) The program also controlled for the fact that officers had no control over where they are sent to police and on certain days may only encounter minority suspects. It created "probability bands" based on the probability that individual officers would stop minority people above a specific statistically significant ratio. The program identified any officer who had stopped minorities beyond a specific ratio.

Initially some 25 officers fell within the probability band. The diversity unit spoke to all those identified; it also interviewed officers with proportionate ratings and high rates of effectiveness to determine how they target their stops. The analysis of the data illustrated problems with officers' understanding of "reasonable grounds"

for making stops, and with certain operations that had legitimate objective but were producing disproportionate results.

The program was run on a monthly basis, automatically emailing the supervisor of any officer it identifies, and generating details of the officers' stops and a template of questions to ask the officers. Supervisors were trained, and required to interview the officer. Supervisors reported on all interviews with recommendations for actions or re-training.

The rate of statistically significant disproportionality dropped among the officers who were identified and interviewed, and across the force as a whole. The data enabled routine conversations by supervisors with officers about ethnic profiling, and officers were aware that their stops were scrutinized and any disproportionality must be explained. Complementing the focus on individual officers, community impact assessment protocols were improved, so that operational planning could take account of potential impact on the public and brief officers accordingly. Unfortunately, the program was discontinued and rates of disproportionality have since risen.

Ethnic profiling is not only the result of the discretionary decisions of individual officers. Profiling also results from decisions about how to police certain areas or neighborhoods and what operations to conduct in response to different crime and public order issues. Just as individual officers' actions require supervision, operational strategies should also be subjected to scrutiny to assure that they are not discriminating against any groups. Operation Pennant is a program developed in London that compared levels of disproportionality among the 23 policing areas (boroughs).

UNITED KINGDOM

London Metropolitan Police Service's Operation Pennant to Monitor Area-Based Profiling¹⁹⁵

In October 2006, the Metropolitan Police Service introduced Operation Pennant, an internal accountability system aimed at reducing disproportionality in stops and searches by holding the worst performing policing areas (based on London boroughs) to account. The Pennant performance framework looks at five aspects of the use of the stop powers:

- Number of stop and searches;
- Arrest rate;

- Recording of self-defined ethnicity on the form;
- Timeliness of data entry from stop forms onto the central database;
- Ethnic disproportionality in searches.

Each variable is weighted in importance to generate a ranked list of how the 32 London boroughs are performing. On a quarterly basis, the five worst performing boroughs are required to complete a self-assessment questionnaire to highlight policy and practice that may be having a disproportionate impact. They then have to explain their performance in front of a Commander, the Metropolitan Police Authority (MPA), and local community members from the monitoring network. Badly performing boroughs are required to produce a three month action plan and report back at subsequent meetings.

Following the launch of Operation Pennant, the Metropolitan Police Service has seen a reduction in the level of disproportionality across London and greater parity among ethnic groups in arrest rates resulting from stops and searches. Data entry became more timely, and supervision improved, ensuring that officers ask and record the self-defined ethnicity of those stopped. The data generated by Operation Pennant are shared with community monitoring groups across all boroughs to allow them to compare local performance against other boroughs.

The MPS is currently expanding Operation Pennant to ensure that the performance framework data are used on a monthly basis by the five areas' Commanders and will be holding two thematic Pennant meetings a year, including Area Commanders, senior officers from each borough, the Metropolitan Police Authority (MPA), and local community members to compare performance around specific issues or powers.¹⁹⁶

General principles of good practice:

- ▶ Managers and supervisors should establish mechanisms to oversee patrol officers' use of their discretionary decisions.
- ▶ Supervisors should check that officers are using stop and search lawfully, with clear grounding in reasonable suspicion where required by law.
- ▶ Operational decisions should be made taking into consideration potential sensitivities around reliance on stop and search powers in ethnic minority communities.

Enhancing Accountability Through Transparency and Information Campaigns

The general public has an important role to play in monitoring ethnic profiling and holding law enforcement agencies accountable for compliance with non-discrimination standards. At the same time, it is in the interest of law enforcement to deepen their connections with local communities and ensure that residents understand some basic aspects of policing and its role in ensuring public safety. For this, civilians must be aware of their rights and responsibilities in encounters with law enforcement and have channels through which to obtain information, voice concerns, provide feedback, and seek redress. Chapter IV of this book discussed formal mechanisms for civilian involvement, such as oversight bodies and complaints mechanisms. This section examines a range of informal or semi-formal actions that enhance community engagement and police accountability, including targeted information campaigns and actions such as “ride-alongs” that increase police-citizen contacts and emphasize openness and quality of service.

The general public frequently has little knowledge of—and many misconceptions about—law enforcement. It is particularly important to provide immigrant communities—some of whose members may come from countries where policing is violent, unaccountable, or used as a tool of political oppression—with information on their rights and responsibilities in relation to law enforcement. The information must be provided in accessible languages. The “Police ESOL” language training program devised in conjunction with the South Wales Police shows how the police can engage with people who do not speak the national language. In communities with low literacy rates, written materials should be complemented with information on local television and radio. Information campaigns are particularly important when the police introduce a new practice—for example, the using of stop forms—or undertake important operations with widespread community impacts.

A relatively simple means to support greater police-community communication are the “know-your-rights” leaflets handed out to every person stopped by the police. In the United Kingdom, information about rights specific to stops and searches is available on the back of stop forms and widely-distributed leaflets. In other countries, leaflets have been developed by NGOs. These leaflets aim to inform residents about police powers and their rights and responsibilities when stopped by the police. Without a basic understanding of these issues, individuals have no basis for knowing whether an officer’s conduct is appropriate and lawful. Know your rights leaflets should always include information on how to make a complaint in cases of misconduct or abuse.

The three case studies below show the variety of ways—in writing, video, and electronically—the police in the UK convey information to members of the public about their rights.

UNITED KINGDOM

“Know Your Rights” Leaflets

The Association of Police Authorities produces a “know your rights”¹⁹⁷ booklet aimed at giving the public and in particular young people information about the stop-and-search procedure. It is available in 20 languages including Arabic, Chinese, Gujarati, Serbian, Somali, and Vietnamese. It provides clear and accessible information on:

- what constitutes a stop and a stop and search;
- why stops and searches take place;
- where they can take place;
- what clothing the officer can require people to remove;
- what information an officer should provide and what must be recorded on the stop form;
- how to complain if you feel you have not been treated fairly.

UNITED KINGDOM

“Go Wisely: Everything you need to know about stop and search” DVD

In June 2008, the Metropolitan and Greater Manchester Police Authorities launched an educational DVD about the police use of stops and searches in combating crime. The DVD is used to train police officers in the appropriate use of stop-and-search powers, and also serves to inform the public, especially young people, of their rights when they are stopped or searched.

The DVD features police officers talking about how stop and search can help them detect crime, and young people talking about their perceptions of stop and search, their experiences of being stopped, and their desire to be treated with respect by the police if stopped. It outlines the applicable law, relevant rights, the social context, disproportionality, and stereotyping. During filming, the camera crew witnessed a real street robbery and filmed the police in action as they searched for culprits and made decisions about who to stop and search. The DVD is widely available to community and youth groups and schools across London, and can be viewed at the MPA website.¹⁹⁸

UNITED KINGDOM

“Know your Rights” Mobile Application

Students in South London have developed an application for mobile phones that provides guidance on what is supposed to happen during a stop and what people can do if they are unhappy with their treatment.¹⁹⁹ The application is a picture-led tutorial on the stop-and-search process allowing users to follow a checklist to ensure that correct procedures are followed. The application can also be used to log the experience during the stop and search and to make a complaint.

A mobile application enables immediate and easy access to guidance for young people who are stopped. The design—done by young people—is accessible and the application can be downloaded without charge nationally on Android phones. The designers are currently expanding the software compatibility for other makes of mobile phone.

Another approach to enhancing police accountability to local residents is the use of “ride-alongs” and other forms of civilian monitoring. In “ride-alongs,” local residents accompany officers on their daily patrols in car or on foot. This enables residents to observe law enforcement officers directly and improve their understanding of different operations. It also requires the officer to consider how his/her work appears in the eyes of a member of the public who may be reporting back to his superiors, or to neighbors and local officials. Regular “ride-alongs” can build understanding and trust between minority residents and officers who may have had only limited contact before, as the following example from Hungary indicates.

HUNGARY

Civilian Monitoring through Police Ride-Alongs

In 2008, as part of the Strategies for Effective Police Stop and Search (STEPSS) project, a team of Roma community representatives observed two police shifts a week for a period of six months and discussed their observations with police supervisors. The observers received training prior to the ride-alongs and signed confidentially agreements. Police officers were given additional guidelines on safety when on patrol with civilian monitors. The monitors observed all aspects of daily policing, focusing primarily on stops. They had the right to interact with the person being stopped and record their observations. They observed the reason for stops, who was being stopped, the conduct of the stop, and ensured that stops were being recorded.

Prior to the ride-alongs, many Hungarian officers had little contact with Roma. The ride-alongs provided the opportunity for a frank discussion with Roma community members about patterns of offending, cultural traditions, and related matters. This led police to recognize the need for more training and in one pilot site a civilian monitor led a series of training sessions for police. The civilian monitors also developed a new perspective on the challenges police face and one monitor has since joined the police force.

Initially, officers voiced safety concerns about the presence of civilians in their vehicles, and reluctance to have an external civilian control. In one pilot site, the monitors were often kept waiting for several hours before officers would take them on patrol, and when they did go on patrol officers would not conduct ID checks, so there was nothing to observe. The problem was corrected after an official complaint to the area commander. Generally, the quality of stops was improved by the presence of monitors.

Similar measures, designed to provide community representatives with an inside look at police work, have been used with Muslim communities disproportionately affected by counter-terrorism measures. In the United Kingdom, the Greater Manchester Police Airport Division took representatives from the local mosque on a tour through the security procedures at the airport after concerns were raised about treatment of Muslims. They also developed a leaflet explaining counter-terrorism stop powers and rights if stopped in the airport.

Civilian monitoring of law enforcement has been undertaken at borders and points of entry by NGOs in a number of countries. In Austria, Germany, Hungary, Italy, Poland, and Slovakia, NGOs conduct ad hoc monitoring at airport and land borders to check that those stopped and detained have been treated fairly and in compliance with the law. Monitoring programs have been put in place in airports in France, Italy, and at Frankfurt airport in Germany. It is unclear what impact these programs have had. In the case of France, authorities ended the program and further restricted NGOs' access.

AUSTRIA

Airport Monitoring of Asylum Procedures

The UNHCR carries out at least two monitoring visits per year to Vienna airport to ensure that legal standards are respected in handling asylum requests. The UNHCR examines whether those individuals who wish to seek asylum have adequate access to the correct procedures, and looks at the conditions and treatment of asylum seekers. At the airport, UNHCR officials meet with border guards, border control police, and alien police, and examine their files. They check the nationality, age, and gender of the asylum seeker, and whether there was a translator present. All this serves to ensure that aliens in need of international protection are identified and that refoulement does not take place.²⁰⁰ UNHCR officials also visit the rejection zone (where individuals are detained for a short period of time prior to being returned on the next flight back to the country they departed from) and occasionally accompany border officials conducting checks onboard airplanes.

FRANCE

Monitoring Treatment of Persons Awaiting Deportation at Airports

In France, UNCHR and a coalition of non-governmental organizations are authorized to visit airport and port waiting zones in order to provide assistance and monitor respect for rights. The waiting zones are where foreigners who are not admitted to French territory are held. This primarily occurs at Charles de Gaulle Airport.²⁰¹ Based on these visits and a telephone call line, the NGOs document the treatment of foreigners and whether their rights are respected. In practice, they report that the border police have a highly restricted interpretation of the authorization to visit the waiting zones and limit their access to the zones and the individuals detained there. A significant problem is the lack of access to further areas where border controls take place (such as checks that sometimes take place immediately on disembarking the plane, and the border checks areas and offices).²⁰² This prevents any assessment of whether ethnic profiling takes place during border controls.

General principles of good practice in enhancing police accountability and transparency:

- ▶ Information should be provided routinely to civilians regarding law enforcement powers and individuals' rights and responsibilities during contacts with law enforcement.
- ▶ Information should be presented in an accessible manner and in appropriate languages for different communities.
- ▶ Law enforcement should welcome and support voluntary contacts with civilians, such as ride-alongs and public forums, which demonstrate commitment to transparency and community oversight.
- ▶ Civilian monitors, NGOs, and/or international organizations should be given the necessary access to effectively monitor checks and controls at borders and points of entry.

Improving the Quality of the Police-civilian Encounter

British research has shown that people care deeply about how they are treated when stopped by police and whether the officer explained the reason for the stop.²⁰³ The quality of the stop affects people's attitudes towards stop and search and towards the police more broadly. This section examines the quality of police stops and the steps that can be taken to improve the quality of encounters between police and civilians.

It is challenging to establish objective measures of stop quality, but studies have assessed how long stops take, how often they lead to searches, the rate at which they lead to an arrest or other law enforcement action, and use of force (such as handcuffs or physical restraints). For example, a study of traffic stops in Las Vegas, Nevada, showed that black and Latino people were more likely to be handcuffed and held for longer periods of time during stops than were whites.²⁰⁴

The negative impacts of being repeatedly stopped by the police are significantly diminished if the officer's conduct is professional and respectful. Being provided with a reason for the stop increases the level of satisfaction with the encounter. Ensuring that police officers are courteous and informative is a simple, low-tech way to improve the interaction between police and civilians. Difficulties in addressing the quality of stops arise from officers' sometimes limited communication skills, inability to articulate the reason for the action, and in some cases the need to overcome built-up hostilities within sections of the community. The following case study explains the legal requirements and guidance on explaining stops in the United Kingdom.

Informing Persons of the Reason for a Stop and Search

The United Kingdom Police and Criminal Evidence (PACE) Act Section 2 provides statutory safeguards for stop-and-search powers.²⁰⁵ Before searching a person or vehicle or detaining a person or vehicle for the purposes of a search, the officer must take reasonable steps to bring to the person's attention:

- the officer's name;
- the name of the police station to which the officer is attached;
- the objective of the search; and
- the grounds for making the search.

The person must also be informed that he is entitled to a record of the search and to which police station he should apply to obtain the record. The acronym GO WISELY is taught to remind officers of these responsibilities:

[G]rounds for the search

[O]bject of the search

[W]arrant card must be produced if in plain clothes

[I]dentify: the PC must inform the suspect of his name

[S]tation: the police station at which the constable works.

[E]ntitlement to a copy of the search record

[L]egal power being used for detention.

[Y]ou are being detained for the purpose of a search: the suspect must be told he is being detained.

Although the Police and Criminal Evidence Act requires officers to explain why they stopped someone, there is evidence that this does not always take place. Several police forces—including the Hertfordshire Constabulary (below)—have developed training and procedures that specifically address the quality of encounters between officers and citizens.

Monitoring the Quality of Encounters by the Hertfordshire Constabulary²⁰⁶

In 2007, the Hertfordshire Constabulary introduced stop forms that include a section to record the quality of the encounter. At the end of a stop-and-search encounter, officers are required to ask the person stopped:

“Thinking about the experience of being stopped by your local police on this occasion, which of the following do you agree with:

- I understand the reason I was stopped. Yes/No
 - During the stop, I was treated professionally, respectfully and with dignity. Yes/No
- Please sign.”

Introducing the questions on the stop form means that the officer is aware that he will have to ask about the quality of the encounter, creating a focus on more professional conduct. The questions are also intended to empower the public and reinforce the notion of policing as a public service. The requirement that officers ask members of the public to rate their satisfaction with the stop has changed officers’ thinking and behavior. It also provides supervisors with further means to monitor officers’ stops, including completion rates of the forms.

People are generally most satisfied with stops that result from planned operations, probably because these are based on intelligence and officers are briefed beforehand, enabling them to provide full explanations of why they are conducting stops. Stops conducted in response to an incident—such as a witness reporting “suspicious behavior,” for example—had the lowest satisfaction ratings. This may be due to the limited and rapidly changing information available to officers, leading to a poorer explanation of the reasons for the stop.

Monitoring of the data showed that black people and young people were least likely to be asked about their treatment and most likely to record negative experiences when asked. Officers who were most likely to focus their stops on ethnic minorities were also least likely to complete the stop forms.

Based on the Hertfordshire experience, quality control questions have since been included in the stop forms used by some other UK police forces. The Suffolk Constabulary includes the same quality questions. (Please see Appendix A for the Suffolk stop form.) When “no” is ticked for either question or the form has not been signed, the police send a letter to the person who was stopped and searched, asking him about the quality of the interaction and giving him the contact information of an independent reporting center where he can make a complaint if dissatisfied with the encounter.

West Yorkshire Constabulary in the United Kingdom has established stop-and-search scrutiny panels to assess the quality of stops through regular meetings during which they examine anonymously completed stop forms, the powers used, reason for the stop, quality of the officer's recording, and other factors.

Several training programs specifically designed to address the quality of stops have been developed. Some include role-playing exercises, and even work with theatre companies to dramatize stop-and-search encounters. For example, in Sweden the district of Soedertoern's diversity project "Give and Take Every Day" aims to improve police encounters with youth—primarily in areas with large ethnic minority populations—through training for officers including role playing and dialogue groups. Other approaches involve joint training sessions with police and minority groups that explore each group's experience of being stopped or of conducting a stop.

In response to problems with officers' using racist and inappropriate language, a number of law enforcement bodies have introduced specific standards and guidance for officers on correct and incorrect forms of address and language to use with members of the public. The guidelines can improve the quality of law enforcement encounters with civilians. The following case studies document two different efforts to regulate and improve the way officers speak to the public.

AUSTRIA

Courteous Forms of Address

Austrian legislation contains guidelines on the manner in which police should address members of the public. Paragraph 5(2) of the Guidelines Regulation stipulates that: "The public security organs shall use the formal term of address ("Sie") in respect of all persons who are usually addressed or demand to be addressed in such a manner." Furthermore, the Ministry of the Interior has issued a decree on the use of language by law enforcement officials to prevent the impression of discriminatory, humiliating, degrading or prejudiced treatment. The Decree of August 7, 2002 states that "the reputation and acceptance by the population, as well as ultimately the efficiency in complying with the tasks of the security services depends largely on how the law-enforcement staff deals with other persons and, in particular, with persons of foreign origin and members of groups exposed to discrimination. It is indispensable to professional conduct that every member of the security services uses language and expressions that avoid any impression of discriminatory, degrading, humiliating or prejudiced procedures or prevent any impression that such motives form the basis for the action."²⁰⁷

Prohibition of Racist Language

In May 2006, the Chief of the Hellenic Police (the Greek national police force) issued a circular entitled “Combating racism, xenophobia, bigotry and intolerance in the course of police action.” This circular emphasized that respect for the diversity of religious beliefs, ways of life, and cultural features of all people without exception constitutes a basic obligation of law enforcement officials. It stressed the obligation of police authorities to investigate a possible racist motive in criminal and administrative cases where immigrants or vulnerable groups are involved. In April 2004, the Hellenic Police headquarters sent a circular to all police agencies indicating that: “when there is a need to identify a member of the vulnerable group of Roma, in correspondence, written and oral statements of the Agencies and your staff, you make use exclusively of the international terms Rom (Roma) or of the term gypsy [*tsiganos* in Greek]. The use of derogatory terms, like '*athigganos*' etc. is not allowed.”

General principles of good practice in improving the quality of police-civilian encounters:

- ▶ Officers should be required to inform people they stop and search of the reasons for the action, and provide information on how to make a complaint.
- ▶ Officers should be required to be polite and be prohibited from the use of any racial, ethnic or other slurs.
- ▶ Mechanisms to obtain community consultation to obtain feedback on the quality of encounters should be created.

VII. Training

Training is an obvious way to reduce ethnic profiling. This chapter looks at four different types of training (general diversity training, cultural sensitivity training, practical training specific to ethnic profiling, and counter-radicalization training) and their effect on ethnic profiling. However, it is important to note that ethnic profiling is difficult to eradicate and that training alone is unlikely to eliminate the practice. It is also important to recognize that not all training is effective and that where training does succeed, it is combined with other complementary measures to reduce ethnic profiling.

Training alone, without additional measures to address supervisory practices and operational procedures, does not offer an adequate response to ethnic profiling. This is particularly true where training fails to directly address the issue and provide officers with practical skills that can reduce the influence of stereotypes. A range of non-discrimination training approaches have been developed, many of which do not discuss ethnic profiling, and some of which do not touch on law enforcement discrimination at all.

It is hard to assess the effectiveness of training programs in reducing negative stereotyping and ethnic profiling in law enforcement. This is due to inherent difficulties in conducting such assessments,²⁰⁸ and the expense of adding an assessment process to already costly training programs. However, this is a serious consideration given that recent research finds that general diversity training or sensitivity training not only has little beneficial effect on attitudes and practices, but may in fact be counter-productive.²⁰⁹

This chapter does not go into depth on the range of human rights training that is increasingly commonly provided to police officers. In part, this reflects the fact that large numbers of training programs have been developed and very few have been subjected to any serious assessment of their impact on officer conduct.

This handbook recommends that law enforcement agencies adopt a more practical and holistic approach to training. Practical training linked to specific powers, actions, and activities of the police is usually more effective than general diversity training.

General Diversity Training

In order to recognize and encourage greater understanding of diversity issues, law enforcement agencies across the EU commonly provide diversity or sensitivity training. Diversity and sensitivity training are popular in many work environments beyond law enforcement.

“Diversity training” or “sensitivity training” seeks to address personal feelings about ethnicity, difference, stereotypes and how these influence our daily lives. Diversity courses do not necessarily discuss discrimination. Some studies argue that cultural and diversity training can in fact single out and reinforce differences, increasing rather than reducing stereotyping.

A large-scale study of the impact of diversity training in changing behavior in private companies in the USA found no evidence that it works, and some evidence that it may be counter-productive.²¹⁰ The study was based on large-scale data on diversity in US corporations and does not make a causal analysis, but found either no improvement or a decrease in minority representation in senior positions in those companies that adopted this approach.

Cultural Sensitivity Training

Cultural sensitivity training (as opposed to general diversity training) seeks to educate officers about the culture of specific ethnic groups with which they have frequent contact but with whom they lack personal familiarity. This type of training addresses the “do’s and don’ts” of engaging with particular communities, and provides guidance on politeness viewed through different ethnic, religious, or national perspectives. Cultural training is best when developed and delivered with the assistance and participation of persons from the relevant communities.

Across Europe there are numerous examples of inter-cultural or diversity training for law enforcement officers, including a two-day inter-cultural competence course for border police at Frankfurt Airport in Germany which does not address discrimination, diversity and anti-racism training focused on Muslims and Islam for military police with immigration controls and anti-terrorism duties at Schiphol Airport in the Netherlands,

and the “Diversity Works Training” jointly developed by the Irish and Northern Irish police and discussed below.

IRELAND AND NORTHERN IRELAND

Diversity Works Training

Irish and Northern Irish law enforcement jointly developed the Diversity Works training course under the EU Peace II program and have since tailored it to their specific contexts.

The course covers: understanding every individual's ability to stereotype, exclude and marginalize others; reflection on stereotypes, prejudices, and assumptions; getting participants to understand their power and how the combination of prejudices and power can result in discrimination; better understanding of diversity; becoming aware of the different types of discrimination faced by members of minority groups; recognizing, acknowledging, and respecting differences; intercultural communication skills; respecting cultural and religious practices during police operations; and understanding that diversity is central to good policing.

The training is delivered through activities, video review, and the participation of members of minority groups. The Garda Síochána gives the course during continuous professional development training (not in basic training for new recruits). The Diversity Works training does not specifically address ethnic profiling; however, it has at times facilitated debate on related issues.

Practical Training Addressing Ethnic Profiling

Training is most effective when it is directly linked to specific practices and skills, and when the information imparted by training is reinforced through other incentives for professional performance, such as performance reviews and the use of performance indicators to assess specific practices.

Reducing ethnic profiling is best achieved through training that explains applicable legal standards and provides practical examples of correct and incorrect use of police powers. Training should discuss ethnic profiling explicitly, note that it is a form of discrimination, and address both the quality of encounters and quantitative disproportionality.

Where possible, training should include members of ethnic minority communities in its design and delivery. Interactive training that engages members of ethnic minority communities directly is helpful in illustrating the experiences of people who have experienced law enforcement discrimination first-hand.²¹¹

In Sweden, officers receive “specific police tactics” training that addresses ethnic profiling. In the United Kingdom, both the Hertfordshire Constabulary and the London MPS have developed practical training that draws on the skills of officers with high hit rates and arrest rates—and few public complaints—to teach other officers how to develop suspicion. The Strategies for Effective Stop and Search (STEPSS) project developed training packages to support the introduction of stop forms in Hungary and Spain which provided guidance on grounds for suspicion, and involved community members in design and delivery.²¹² (Please see Appendix A for the Hungarian stop form.)

Practical training has also been developed for immigration officers drawing on a United Kingdom Home Office program called the “Quality Initiative.” This approach first conducts an audit of first-instance decision-making in asylum cases, and on the basis of findings develops training designed specifically for asylum adjudicators to improve the quality of decision-making. The UNHCR is replicating this approach in Slovenia, Slovakia, Romania, and Poland.

Training can also be tailored to specific needs, as with the Amsterdam police’s training on management of a range of diversity issues for their police leadership.

NETHERLANDS

Leadership Training²¹³

The Amsterdam police force trained 300 officials in management and leadership as part of its “Safe Climate” program. The training helped participants become aware of prejudices and stereotypes, listen and withhold immediate judgments, gain cultural awareness, improve communication skills, improve community skills, and learn different styles of leadership and behaviors relevant to managing diverse environments. The program aims to create a safe environment in which leaders can discuss and reflect on their questions and dilemmas about leadership and diversity. Project organizers describe it as “building a bridge while walking on it.” The Amsterdam police force went on to conduct further leadership training for the 900 other executive police officers in the city.

A number of trainings have been developed that focus specifically on young people and the police, and the experience of stop and search. The following case studies are from London and Sweden.

Youth-Police Training on Stop and Search

Second Wave is a youth arts project that organizes training workshops on stop and search with young people and the Lewisham Police and Territorial Support Group (TSG) in London.²¹⁴ Workshops involve 6–8 youth participants and 6–8 police participants. Workshops are designed by the young people (with the help of a tutor), and include drama-based games, trust exercises, and role-play scenarios exploring street encounters combined with in-depth discussion of police-youth interactions. Workshops examined issues of ownership of public space and perceptions of young people and identity in relation to the recording of ethnicity on stop forms. In role plays, officers wear civilian clothes, and when roles are reversed, young people put on police uniforms. The role plays are also taken into public spaces. The discussions have continued from one workshop session to another, developing bonds between the young people and officers.

The police officers involved in these workshops have developed a deeper understanding of young peoples' experiences. One senior officer noted that the workshop challenged police thinking and gave them greater insight into young people's expectations, and that it fostered a more open, transparent and accountable approach to addressing crime and community safety issues. He also stated that it has "significantly developed officers' communication skills and ability to relate to young people," and that this in turn had engendered trust in young people. For their part, the young people involved in the process developed a greater understanding of stop-and-search powers and policing in general. Many have become involved with local government bodies, through the Lewisham Police Consultative Group and other forums, and are participating in an outreach program to expand the workshops to local schools.

Another London community organization, called "Not Another Drop," developed a youth-led stop and search training package.²¹⁵ Not Another Drop identified young people ages 15 to 19 of different backgrounds who had all been stopped and searched and wanted to work with the police to improve their relationships with young people. The young people were trained to develop, facilitate, and deliver training sessions, which they are then paid to deliver to the police and community groups. Training sessions are led by two young people, with an independent advisor providing support, and take place on evenings and weekends to fit around work and school schedules. The training is compulsory for all officers within the borough.

SWEDEN

Police and Youth Sharing Experiences

In December 2005, the police district of Soedertoern in Stockholm started a “diversity group” to initiate a dialogue around crime committed by youth. An initial conference in March 2006 was criticized as too theoretical and not supportive of a dialogue between the police and young people.

The second phase of the project shifted the focus from theory to practice. The police got together with local youths to discuss problems, values, and perspectives. A role-play component also helped the two sides understand each other. Feedback was overwhelmingly positive. In 2006 and 2007 this dialogue initiative became a mandatory training course for all district officers, under the title “Give and Take Every Day.” The project ended in October 2009 when all police officers had been trained.

UNITED KINGDOM

Operation Nicole Counter-Terrorism Training²¹⁶

Operation Nicole is a training initiative developed by the United Kingdom National Community Tension Team that brings community members and police officers together to role play a terrorist incident investigation. The goal is to give both sides insights into issues that arise and factors that inform decision-making. Police and community members play out an unfolding scenario looking at the impact of decisions from each perspective. Police forces across the United Kingdom have taken part, adapting training to local contexts.

Officers gained insights into the possibilities for community assistance, and heard community expectations about the information residents want from the police in order to build confidence. Community members learned of the challenges police face, including the continuous balancing of risk and considerations such as public safety, intelligence gathering, securing evidence, and the impact of these sometimes conflicting considerations on decision-making.²¹⁷

Another form of training that is being developed by a number of police forces, particularly those with responsibility for airport security and public transport, is behavioral training. This approach focuses on specific behaviors, shifting officers’ attention away from appearance, as exemplified by the following case study of the UK BASS training.

Behavioral Assessment Screening System (BASS) Training and Passenger Assessment Screening System (PASS)²¹⁸

The Behavioral Assessment Screening System, or BASS, was developed by the Massachusetts State Police in the US and adapted by the British Transport Police. The training focuses on stress behaviors in airports or transport hubs, with criteria developed from a review the footage of the 9/11 hijackers taking flights in and out of Logan Airport in Boston before the attacks, and further data gathered from the 7/7 London Underground attacks.

All British Transport Police (BTP) officers working on the London Underground system have received the BASS training and it is being rolled out to officers working on the rail network nationwide. The two-day training includes lectures, discussions, and practical exercises both within the classroom and in transport hubs. The training points out that there is no racial or religious profile for terrorists—recent attacks have been conducted by people of all ethnicities.

An internal evaluation conducted by the BTP six months after all officers had received the training found that the quality of stops on the Underground had improved. The actual number of stops was substantially reduced, while the numbers of arrests resulting from stops increased by 400 percent. The collection of intelligence from stops also improved.

In 2010, the Centre for the Protection of National Infrastructure (CPNI) developed the Passenger Assessment Screening System (PASS) to identify suspicious behaviors in airports. PASS is a four-day training package, which teaches security officials to identify suspicious behavior, approach and question suspicious individuals, and take appropriate action. The training includes classroom based lectures and discussions and practical exercises conducted in airports, and teaches officers to focus on observable suspicious behaviors.

Over two hundred police and security officers have received the training at airports across the United Kingdom. An independent evaluation found that stops conducted under the PASS model were significantly more effective than random airport stops. Ethnic monitoring has shown that after local demographics are taken into account there is no ethnic disproportionality in stop rates.

Training in the Counter-radicalization Context

Efforts to identify individuals at risk of “radicalizing” towards support for or participation in violent terrorist activities have led to the development of a number of specialized training programs. These programs often look to Dutch and British experiences for models and lessons, and have tended to focus primarily on al Qaeda-inspired terrorism. Counter-radicalization training programs often target a variety of actors beyond the police, including social workers, youth workers, teachers, and local authorities. When trainings focus heavily on the nature of religious practice as an indicator of radicalization and a criterion for suspicion, they risk promoting rather than preventing ethnic profiling. The connection between orthodox Islam and radicalization is not proven; indeed, prominent experts argue that strong religious faith is as much or more of a protection against radicalization than they are a pathway towards it.

Alternative approaches avoid promoting stereotypes that cast suspicion on Muslims. These provide information to law enforcement actors about the diversity of Islam, support police in scrutinizing their own preconceptions, and make them aware of the wide range of social, political, personal and other factors that underlie radicalization processes. Given the considerable room for error and stereotyping when individuals who are not experts in this complex area seek to identify “potentially dangerous individuals,” these training programs also provide trainees with information about expert resources to turn to when they are suspicious about an individual or organization.

NETHERLANDS

Amsterdam’s Information House Training on Radicalization²¹⁹

The information house (*informatiehuishouding*), a special unit within Amsterdam’s Department of Public Order, Safety and Security, provides training in recognizing and dealing with radicalizing youth for different professionals including social workers, teachers, youth workers, and others under the city’s anti-radicalization policy.

The trainings discuss the varied contexts and processes of radicalizations. They explore a range of frustrations experienced by individuals, which might constitute the “breeding ground” of radicalization including a strong perception of discrimination, injustice, humiliation, alienation, double standards, hostile media, and religious persecution.²²⁰

Trainings explain the tenants of jihadi ideology and discuss the difference between orthodox religious practices and violent extremist ideology. They teach local actors to engage in questions of religion, philosophy, and morality, and to feel comfortable talking about these issues and to listen to what individuals are saying. They encourage individuals to listen to their instincts and not to be afraid to contact the *informatiehuishouding* with questions. The trainers are themselves Muslims.

BELGIUM

In-House Expertise on Islam²²¹

The Belgian Federal Judicial Police has two experts on Islam (trained in Islamic and Arabic studies) who provide advice and training to police with counter-terrorism responsibilities. The specialists provide a one-day course titled “Islam from Mainstream to Extreme,” which is obligatory for counter-terrorism investigators.

The course provides police with information about Islam. It challenges participants’ stereotypes and encourages them not to rely on these in making assessments of individuals or organizations who might pose a threat. When they are not sure whether a particular situation is suspicious, police are encouraged to take detailed note of the situation and to consult with the specialists.

General principles of good practice in training to reduce ethnic profiling:

- ▶ Training should address ethnic profiling explicitly.
- ▶ Training should be practical and focus on the use of powers where ethnic profiling may arise.
- ▶ Patrol officers and supervisors should both receive practical training on means to address ethnic profiling in their respective roles .
- ▶ Training should be complemented through supervision, monitoring, and incentive structures that reinforce the same non-discrimination values.
- ▶ Community members should be involved in the design and delivery of training.

VIII. Changing Institutional Culture

Changing the institutional culture of law enforcement organizations is a subject of extensive study. The role of leadership is central, as law enforcement leaders must first recognize a problem in order to address it. This handbook does not go into theories of management and institutional change, but explores approaches and tools for reducing ethnic profiling, including policy audits, promoting workplace diversity, and the use of specialized units. (The creation of a special unit represents a narrower approach that can be used if there are impediments to larger shifts in institutional culture.)

Policy Audits and Reviews

Policy audits are a tool to identify a range of institutional factors that may be driving or permitting ethnic profiling. A policy review provides a foundation for developing a set of policy recommendations and a holistic approach to addressing ethnic profiling. Policy audits give law enforcement institutions the opportunity to review their policies both force-wide and at the local level, learn how policies are translated into practice, assess the effectiveness of policies and practices, and measure their impact on different communities.

A thorough audit of ethnic profiling practices will seek information from multiple sources and will engage the communities affected by ethnic profiling. When audits are used to examine ethnic profiling, the involvement of ethnic minority communities is critical, both to be sure of addressing the issues fully and to assure the credibility of the findings. Communities should be involved in setting the parameters and questions for the audit, in reviewing the findings; and in shaping recommendations and proposals for action. Audits should focus on different ranks throughout the police hierarchy and their

various responsibilities, including: setting policy, training, resource deployment, supervision, and street patrol, among others. Audits should use a range of quantitative and qualitative data, and examine the actual behavior of officers, not just policy standards.

The 1999 report into the police killing of Stephen Lawrence and subsequent investigation uncovered the existence of “institutional racism” in the British police.²²² The term has been controversial, but it illustrates the fact that discriminatory policing practices have multiple roots and manifestations, and that a thorough effort to identify and address these dynamics requires a broad assessment of institutional standards and practices. The primary tool for such assessment is a policy audit. Policy audits may examine an institution across the board, or may target particular areas identified as problematic.

Audits have been used to address ethnic profiling in the United Kingdom and Canada, specifically to review the use of stop-and-search powers.²²³ The Northern Ireland Police Service (PSNI) is required to consult on the impact of all changes to policy; policies found to have a disproportionate impact on specific communities have been amended as a result. In the Netherlands, the Amsterdam Police contracted independent auditors to examine the organization and its work. One of the auditors focused on the information and preconceptions that drive police choices about interventions. This researcher conducted a follow-up qualitative study involving interviews with between 50 and 60 police officers about their rationale for deciding who to stop and search. The Romanian Police Strategic Initiative developed a model for the assessment of policing of the Roma.²²⁴

The following case study describes the “practice-oriented package” designed by the British Home Office specifically to audit disproportionate stop and search.

UNITED KINGDOM

Practice Orientated Package and Next Steps²²⁵

The Practice Orientated Package (POP) was developed to determine the reasons for the ethnically and racially disproportionate use of stops and searches across the United Kingdom. The POP audit process analyzed stop data, consulted with community groups, conducted seminars with senior and operational officers, examined the intelligence used to target stop-and-search activity, and attempted to determine causes of disproportionality in stops and searches.

The audit required police services to examine where and why disproportionality was arising, and to involve local communities in the discussion. Twelve forces in England

and Wales have used the package. Most have seen a reduction in levels of disproportionality after acting on assessments that showed poor management of intelligence, poor communication of that intelligence to front line officers, and lack of local accountability.

In response to the sporadic application of the POP package, the National Policing Improvement Agency (NPIA) developed a new diagnostic tool, “Next Steps.” Next Steps encourages appropriate and effective use of the stop-and-search power while exposing inappropriate, ineffective use of the power, particularly when it is having a detrimental impact on community confidence. Next Steps identifies key building blocks for the effective use of stops and searches:

- Accurate local data
- Informed and responsive tasking
- Effective briefing
- Good quality encounters
- Effective communication with local communities
- Stops and Searches are based on “reasonable grounds” that would satisfy an objective observer

The NPIA has piloted the Next Steps diagnostic tool in three forces: the Metropolitan Police Service, the Merseyside Police, and the Dorset Police. The tool will then be revised and rolled out nationally. There are initial concerns that Next Steps does not include any community involvement in the evaluation of police activity and that findings will only be shared with the police force and not made public. There is no external evaluation planned to determine how effective and robust the Next Steps is as a tool, and as the NPIA has no power of enforcement problems identified during the audit can simply be ignored by police forces if they wish.

General principles of good practice in conducting policy audits:

- ▶ Policy audits should use multiple information sources—both internal and external.
- ▶ A policy audit will have greater public legitimacy if it includes non-law enforcement persons from minority communities.
- ▶ The audit process must be open and transparent and results of policy audits should be made public and discussed with all stakeholders.
- ▶ Policy audits must be followed up with concrete actions on key recommendations in budgets, legislative action, and through the assignment of personnel or other resources as necessary.

Minority Recruitment, Retention, and Progression

Law enforcement agencies function better when they look like the communities they serve. Communication, trust, and cooperation between law enforcement and communities are enhanced by representative policing.

In theory, diverse and representative police personnel are less likely to resort to ethnic profiling. In practice, it is not clear that this is in fact the case—at least until minority officers reach senior management positions.²²⁶ Police officers of all ethnic backgrounds may share and act on stereotypes about patterns of offending. Minority officers may face pressures to demonstrate that they will be tough on other minorities. Where ethnic profiling arises from operational practices that use aggressive stops and searches in neighborhoods with predominantly ethnic minority residents, individual officers of ethnic minority background may not have any ability to have input into operational decision-making and strategy.

In an effort to correct the lack of ethnic diversity in their ranks, many agencies across Europe have taken steps to recruit law enforcement officers from ethnic minority and immigrant backgrounds. These efforts have been hampered by the challenge of overcoming minority communities' mistrust of law enforcement, nationality and language requirements, and mandatory entrance exams steeped in the national culture.

Efforts to increase workforce diversity must be presented to the public and wider police force with care to avoid any backlash or hostility. The effective implementation of such policies also requires the collection and monitoring of accurate information on the ethnicity of employees. In some settings, law enforcement agencies have established quotas in order to ensure they reach a target percentage of recruits from a certain group. Quotas are controversial and may face legal obstacles. In practice any preferential treatment to recruit a specific group into the police must be carefully tailored to specific national conditions, and be limited to such a time period as is necessary to achieve the established objective.

The Netherlands has recruited minorities since the 1980s. A key lesson is that minority recruitment should not lower entrance standards. This was done in the 1990s to increase minority recruitment. While most of those recruited have since departed the force, it left a lasting perception that ethnic minorities are less competent. Current minority recruitment policies include: recruitment targets, programs to prepare for entrance tests, minority internships, reserved places, religious accommodations, and diverse recruitment and selection committees. In 2009, minority officers constituted 6.7 percent of police nationwide—still well short of the goal of matching the proportion of minorities in the population (19.8 percent).²²⁷

NORTHERN IRELAND

Creating a More Balanced Police Service in Northern Ireland

Following the Northern Irish peace process, rebuilding trust in the police to overcome Protestant domination was pursued through a minority recruitment initiative known as the “50/50 recruitment provision.” This allows for preferential treatment (where conditions are met) in appointments as police trainees and police support staff in order to meet a target of 30 percent Catholic officers within ten years. The provision has changed the composition of the force. It has not only encouraged more Catholics to join the PSNI but also large numbers of women. It has had little success in recruiting ethnic minorities. The provision does not apply to all civilian staff positions, and there has been little systematic monitoring of rates of retention and promotion.

More common than quotas are programs designed to support minority applications to law enforcement. Efforts vary from limited web-based attempts to encourage minority recruits in Denmark, to a three-year recruitment drive in Ireland which eliminated the requirement of Irish nationality. In Catalan region of Spain, minority applicants receive special courses to help them with fluency in Catalan and other requirements for the challenging police entrance exams. The Swedish initiative described in the following case study used civilian positions in the police as an entry point for minority candidates.

SWEDEN

Diversity Recruitment Projects

Until 2005, the police in the Stockholm borough of Soedertaelje had almost no employees of ethnic minority background, although over 25 percent of the local population was of minority origin. The three-year “Spira” project aimed to increase ethnic minority representation in the police force. Out of 140 applications from ethnic minorities, 17 people were employed in various civilian positions, with the aim of eventually becoming police officers. When the project ended in 2007, five people had enrolled at the police academy, seven were permanently employed within the police in different positions, and four were still working with the police on temporary projects.

In 2009 the Spira project was rolled out across all Stockholm boroughs. In October 2009, 70 people—most of non-Nordic origin—were offered employment with the

police. More than half were women, the average age was 22, and between them they spoke 41 different languages.

Following the success in Stockholm, similar projects have been launched in Malmo and Gothenburg.

Minority recruitment must be conducted appropriately. As the next case study from Sweden indicates, well-meaning efforts can backfire if they are clumsy.

SWEDEN

Well-Intended Diversity Promotion that Backfired

In 2007, the National Police Authority sent letters to encourage minority applications to the police academy. The text was criticized by recipients as derogatory, if not outright racist. The letter read:

“Hi!

We demand that you visit our website at some point before 15 March 2007. So far you have not done anything, but we want you to. We would like you to apply to our police training, you see. With your experience and background as a ghetto kid you are extremely valuable to us.

And by the way, you don’t need to be big, strong and macho to be a police officer. The only things you need are decent grades, good will, and faith in man.

We welcome your application!

Best regards,

Police Recruitment”

Once minority officers are recruited, further policies are required to address common issues in law enforcement culture that can hamper retention and career advancement for minority officers.

Minority officers often face a hostile institutional climate characterized by difficulty feeling accepted, not being recognized and promoted, facing harsher responses to mistakes, feeling pressured to deny or hide their cultural or religious identity, and confronting overt discrimination, racism, and harassment. In Belgium, an officer of Moroccan origin described being disciplined because he spoke in Arabic to an elderly

Moroccan man. Another minority officer who is Muslim asked if he could pray at work and was told by another officer, “No way, you have to adapt 100 percent to the other side; integration means you act as I do.”²²⁸

Minority officers are in the uncomfortable position of being perceived in their own and other ethnic minority communities as implementing discriminatory policies such as ethnic profiling. Minority officers also often face suspicion over the choice of a law enforcement career from their own families and communities. Joining law enforcement can be seen as a betrayal. The sensation that neither their workplace nor their community fully accepts their role is psychologically and professionally challenging.

NETHERLANDS

“Safe Climate” Initiatives²²⁹

The Netherlands has a revolving-door problem: every year nearly as many minority officers leave the police as join, leading to a low net increase. Dutch police have sought to improve retention through “safe climate” policies. These include establishing minority support networks, emphasizing diversity as a management issue, providing confidential counseling, creating anti-harassment policies, and offering additional diversity training. To date, these efforts have not yet significantly improved minority officer retention.

Rotterdam’s approach involves establishing high level leadership and management responsibility for issues of diversity. A steering group chaired by the police chief has three portfolios: (1) a multi-ethnic policing and discrimination portfolio examines police-community relations; (2) the diversity portfolio considers internal diversity; and (3) the integrity portfolio examines police conduct. District and department managers are responsible for addressing diversity within their teams and must make progress reports every three or four months.

Rotterdam’s approach aims to fold diversity issues into daily operational policies and practices. There is a special focus on diversity issues during team meetings every two or three months. Themes are put on the agenda via small cards distributed throughout the organization and each team discusses them. Past themes have included gossip, dress, wearing insignia, integrity, and interactions between officers. The discussions reportedly opened up communication among all officers and brought controversial issues into focus.

Minority officers are also creating professional associations for mutual support and to advocate for their needs within law enforcement agencies. The United Kingdom’s

Black Police Association and Association of Muslim Police, the Hungarian Roma Police Association, and minority police networks in the Netherlands are examples. The associations have designed and supported recruitment campaigns and supported minority staff through mentoring schemes, help lines, legal representation, and other issues. They are also playing an increasing role in improving service delivery to minority citizens.

UNITED KINGDOM

Black Police Associations

The London Metropolitan Police Service (MPS) established the Black Police Association (BPA) in 1994 with the stated aim “to improve the working environment of black personnel within the Metropolitan Police Service with a view to enhancing the quality of service to the public.” Membership is open to all officers, civilian staff, and special constables of African, African-Caribbean or Asian descent. Since the association’s establishment in London, a national association has been formed and all 43 police forces nationwide have Black Police Associations.²³⁰ The BPA plays an important role supporting minority officers through mentoring programs and providing legal advice and representation.

UNITED KINGDOM

MPS Association of Muslim Police

The London Metropolitan Police Service’s Association of Muslim Police (AMP)²³¹ was established in 1999 to improve the working environment, retention, and recruitment of Muslim police officers. It forms part of the National Association of Muslim Police. It assists Muslims in law enforcement to observe their faith, as well as promoting understanding of Islam, providing a forum for Muslims in law enforcement; and supporting their religious and welfare needs. The AMP is active in pursuing faith-friendly policies, including suitable clothing for officers, and the provision of Halal food and prayer facilities. They provide a 24-hour helpline for officers and police staff needing help with welfare issues.

The AMP also works to improve service delivery. Recently, the AMP advised police at Heathrow to ensure that detention facilities had appropriate facilities for Muslims detained in the airport and contributed to an online diversity handbook that provides information for officers on tenants of the faith and other information relevant to their daily work.

General principles of good practice in minority recruitment, retention, and progression:

- ▶ Create programs to encourage and support minority recruitment into law enforcement.
- ▶ Review entrance standards to eliminate non-essential and potentially discriminatory criteria.
- ▶ Do not otherwise lower standards for any recruits, rather provide support in meeting entrance requirements for target groups.
- ▶ Extensive community outreach will improve the quantity and quality of applicants.
- ▶ Collect and monitor ethnic data on the recruitment, retention and progression of police officers and civilian staff working in law enforcement
- ▶ Create retention and progression initiatives to address challenges faced by minority officers.
- ▶ Announce a zero-tolerance policy on discriminatory language and actions within the agency, enforced with visible consequences for infractions.
- ▶ Support the creation of professional associations of minority officers and encourage their engage

Specialized Diversity Units

Some police forces in Europe have sought to address the need for greater diversity in their ranks by creating specialized units responsible for diversity issues. These units address diversity issues within law enforcement agencies and through outreach to ethnic communities. This strategy risks marginalizing diversity issues by making them a concern only of the specialized unit. This approach contrasts unfavorably with holistic approaches which address diversity issues throughout the institution. Despite this drawback, specialized diversity units may be useful in countries with highly decentralized law enforcement. In such circumstances, specialized units at the national level can be a mechanism to press for greater attention and consistency in non-discrimination policies across multiple law enforcement agencies, as the following case studies indicate.

NETHERLANDS

Role of National Diversity Unit in a Decentralized Policing System

The Netherlands' National Diversity Expertise Centre (LECD) is mandated to work with all law enforcement services, but in practice has largely worked with police. It has a staff of fifteen, one of whom addresses discrimination. It has a task force on "police dilemmas" that includes ethnic profiling, Muslims, and racist attitudes. The LECD advises the Ministry of the Interior and law enforcement agencies on working in multi-ethnic environments, promotes diversity within agencies, advises and supports agencies in addressing discrimination, and provides expertise when public security problems arise in multi-ethnic areas. It is not a permanent institution but a more short-term initiative that is approved to work through 2014.

IRELAND

Garda Racial and Intercultural Unit

The Garda Racial and Intercultural Unit (GRIU) has a broad mandate—to coordinate, monitor and advise on all aspects of policing ethnic and cultural diversity—and a staff of two. The GRIU has conducted extensive outreach to ethnic minorities to build communication; it also holds an annual meeting with ethnic minority communities.

Grassroots level outreach is conducted through "ethnic liaison officers" or ELOs who are local officers ("Gardai") charged with building relations with diverse ethnic communities locally in addition to their other duties. This approach encountered initial problems when Gardai holding immigration functions were assigned to work as ELOs; the policy was ended. In practice, the effectiveness of ELOs reflects the efforts of individual officers. In mid-2008 there were approximately 550 ELOs, and the number was set to increase, although the ability of the GRIU to support an increased number of ELOs is in question, given its small staff.

The work of GRIU faces challenges. Independent sources stated that officer awareness of the unit may be limited, and that greater leadership and resources are needed to reinforce and mainstream its values throughout the Garda.

General principles of good practice regarding specialized diversity units:

- ▶ Diversity units should not be the only element of a police force addressing issues of ethnic profiling and non-discrimination. Rather, ethnic profiling and non-discrimination must be addressed holistically, across the entire force.
- ▶ Diversity units need support from senior leadership and an institutional commitment to non-discrimination values.
- ▶ Special units need staff with expertise and resources to address the complex issues involved.
- ▶ Staff must receive training, supervision, and support to carry out their functions.
- ▶ Officers working in diversity units need to have the profile and skills to win the trust of minority communities.
- ▶ Local ethnic minority communities should be closely involved in the development, implementation, and evaluation of the work of diversity units.

IX. Community Outreach and Involvement

In order to reduce ethnic profiling, the relationship between law enforcement agencies and the diverse communities they serve must change. Efforts to monitor and address ethnic profiling must engage with the ethnic minority and immigrant communities affected by profiling practices.

Research has demonstrated that positive contacts with law enforcement increase public satisfaction and trust. Greater trust in police should improve rates of crime reporting and cooperation with police in crime prevention and investigation. Outreach can identify particular law enforcement patterns and practices that generate tension; identify individuals who may engage with training, advisory committees, and other police-civilian interactions; and identify policing priorities and approaches with the support of the community, including alternatives to stop and search.

This chapter examines community outreach, including community policing, the role of specialized operational units, community involvement, and working with “hard-to-reach” and “hard-to-hear” groups. Promoting the involvement of local communities in decisions about how they are policed is central to ensuring fair, effective, and accountable policing.

Community outreach efforts almost always confront the question of who represents the community, and which voices are accepted as legitimate partners or interlocutors. There is often confusion about what is meant when talking about “community” and related terms such as “engagement,” “empowerment,” “participation,” and “consultation.” By community, this handbook refers to a group or section of the population who are defined by commonalities of geography, occupation, age, ethnicity, religion, or

other characteristics or values. Commonly, police forces are structured along defined geographical areas, serving the people who live in, work in, or visit the area. Community outreach is a more challenging proposition for border authorities who deal with transient populations. Nonetheless, border agencies have also found creative ways to conduct community outreach.

Policing also confronts “hard to reach” groups that are notoriously difficult to include in dialogue with police. It is widely acknowledged that there are sectors of the population that are “hard to reach or hear” such as young people, ethnic minorities, disabled people, and gay, lesbian, and transgendered communities. This may be due in part to these groups’ perception that they are policed differently from the rest of the population, being distrustful of the police, or requiring different mechanisms to be able to engage with the police. For example, current efforts to build bridges to Muslim communities confront the fact that there are many Muslim communities, of varied national origin, ethnicity, and religious belief. Compounding the challenge is the lack of Muslim officers in European law enforcement, and lack of familiarity with Islam on the part of most non-Muslim officers.

Defining “community involvement” is even more challenging, as this term means different things in different contexts. “Community involvement” ranges from providing information and consulting with communities, to giving citizens power to participate in decision making. The mechanisms to engage communities can include surveys, research projects, public meetings, resident forums, police-community consultative groups and special initiatives or projects. A common question is how representative of their wider community are those individuals who participate in community engagement mechanisms. It is common to hear that consultative meetings are always attended by the same people, or that police themselves identify and speak with “community leaders” although it is not clear whether those individuals represent wider community interests.

Defining Terms

INFORMATION is an essential element of community engagement as it serves to improve access to and use of police services. The police should provide information to local communities about local issues, how to use police services and report crimes, and relevant law enforcement policies. Information should be accessible and should encourage meaningful community engagement and consultation.

COMMUNITY ENGAGEMENT OR INVOLVEMENT are the actions that police take to enable them to consult, involve, listen and respond to communities through ongoing relationships and dialogue. Involving communities allows them to participate in developing solutions, shaping and designing policies and services, and—crucially—participate in decision making.

CONSULTATION is the process by which the police and other agencies seek advice, information and opinions from communities about strategies, policies and services, in order to inform their decision-making and design good services. This can include activities such as surveys, research projects, public meetings, and resident forums.

COMMUNITY EMPOWERMENT takes place through engagement and other activities. Responsibility and influence are shared with communities and individual citizens, who gain the power to take decisions about services and initiatives that affect their lives.

General principles of good practice in community outreach:

- ▶ Ensure that all those participating understand what is meant by “community involvement” and what are the aims and expected outcomes of that involvement. Be clear about who should be involved and why.
- ▶ The methods of involvement must be tailored to the purpose of engagement. Employ a combination of mechanisms to obtain a broader picture of the issues that need addressing and involve a wider number of voices in decision-making.
- ▶ Involve a mix of local persons broadly representative of the individuals, groups, businesses, or organizations considered to have an interest.

- ▶ Take steps to ensure that all parts of the community are involved, including marginalized groups, vulnerable people, and others who may be hard to reach or hear. This includes being sensitive to divisions within communities and the use of appropriate tools of engagement for different groups.
- ▶ Define clear accountability structures including terms of reference and protocols for involvement mechanisms. It is important that community members understand how their input will be used.
- ▶ Help communities build the capacity to hold the police accountable through enhancing necessary skills and expertise.
- ▶ Provide resources to assist those working to build community involvement mechanisms.

Community Policing Approaches

Many EU member states have long-standing community policing or “proximity policing” strategies which work through close contact and partnership with local residents. Community policing approaches can address ethnic profiling by supporting outreach to ethnic minority and immigrant communities, improving relations and understanding, and improving service delivery.

Community outreach must be taken seriously by law enforcement agencies, who must commit to sustained dialogue with community representatives. Law enforcement agencies undermine their efforts if they only reach out in times of crisis. A dialogue requires that law enforcement be willing to hear community complaints regarding their practices, and respond to the issues that are raised.

Communication must be also be sustained through changes in police personnel. This means that the community policing approach needs to be integrated into the organization’s way of doing business rather than relegated to a handful of officers charged with “minority community relations.” Productive and enduring community outreach cannot be a one-way process of law enforcement instructing the community on issues and actions; it must be a two-way process.

The United Kingdom’s West Yorkshire Police regularly conduct “street briefings.” Twice a day senior officers brief police officers in public places such as parks, community centers, and commercial thoroughfares. Members of the public can listen to the briefing given to officers before they go on patrol and are invited to join in and highlight local issues and concerns. The reaction to the street briefings by the local communities and the police has been positive, as it increases visibility and helps officers to understand and target local problems.

Law enforcement agencies must be sensitive to the fact that cooperation with law enforcement is not always viewed favorably by all community residents, particularly in communities with strained relations with police. In some cases, local leaders may lose the trust of community members if there is an explicit expectation and publicity around cooperation with police. Law enforcement officers at the local level must enjoy some level of discretion to respond to needs of marginalized groups, including those whose residency status may be irregular.

The following case study on Bray, in Ireland, shows how police can build relations with minority and new immigrant communities through assisting them in matters of concern.

IRELAND

Bray's "Garda on the beat"²³²

In Bray, a suburb of Dublin, a small group of community police have built relations with minority groups, including "new minorities" and Travellers. They take a "Garda on the beat" approach based on direct personal contact to find ways to meet the needs of minority groups, often through simple gestures, such as lending rooms, providing information, or assisting with transportation, security or logistics for events.

For instance, community Gardai have provided information to members of the Chinese community on work and residence permits, and have arranged for officials from other services—such as the immigration bureau—to give talks. The Gardai gave a local Chinese group information about how to form an association. These contacts built a level of trust that has enabled members of the Chinese community talk to the Gardai about very sensitive issues, including the difficulties of illegal migrants, such as exploitation or legalizing their status. Such discussions require that the Gardai have discretion and do not use that information to enforce immigration law.

Gardai have also been reaching out to the growing Indian community. A local Gardai has been dropping by new Indian shops, chatting with individuals and providing contact information. Gardai also held an informal meeting with Indian representatives to get acquainted and see ways they could assist, and Gardai attended the Indian Harvest Festival Celebration. This was followed by an informal workshop on road traffic regulations at the request of Indian community representatives, with officers in plain clothes, in a local pub.

Law enforcement agencies must be sensitive to the impact of potentially controversial events that can create mistrust or destroy relations. When high-profile arrests, raids, counter-terrorism measures, or other events threaten to upset a particular community, it is important for law enforcement officers to explain their actions, allay fears and correct misperceptions by providing accurate and timely information.

It may be critical to provide such information concurrent with or even prior to the event. This prevents community leaders from learning of events through potentially inaccurate or sensationalist media stories, and puts community leaders in a position to provide informed opinions to the media and community.

As the following case studies indicate, police in Belgium and the Netherlands make special efforts to provide information in advance of law enforcement actions that could have negative repercussions in specific communities. They explain the basis for the operation, enabling local leaders to discuss those events in their communities and with local media. Prior dialogue can identify sensitive issues and explore strategies to mitigate the worst impacts of dramatic events such as counter-terror or immigration enforcement raids.

NETHERLANDS

Community Policing in Amsterdam

Amsterdam's ongoing community policing approach cultivates contacts with different communities in each neighborhood. Amsterdam police undertake additional outreach around controversial events. When the Amsterdam police arrested a well-known Muslim radical, they contacted Muslim community leaders in advance to explain the basis for the arrest. This information must be provided without jeopardizing the operation or possible legal actions, but must be provided to the community before it is given to the media. With knowledge of the arrest and its evidentiary basis, local leaders were able to calm any negative reactions in the community. Communication can also reduce perceptions that prejudice or discrimination is driving law enforcement actions.

Amsterdam police officials stress that neighborhood police do not only reach out to Muslim communities about terrorism-related matters, but as part of their regular crime prevention and crime detection work. Dutch counter-terrorism officials emphasize the importance of neighborhood police for collecting grassroots information needed in the fight against terrorism.

Brussels North²³³

Belgian police in Brussels North, an area with residents of 172 different nationalities, are expected to get to know residents and local organizations. Neighborhood inspectors are expected to know local needs, problems and concerns in the neighborhood. Neighborhood inspectors also have special projects to develop personal contact with youth and hard to reach groups. For example, a school mentoring project works with 52 primary schools whose students range from 11 to 12 years old. Volunteer police officers serve as mentors to the students, and discuss the role of the police and rights and responsibilities of citizens.

Special projects are organized by the “mediation assistance service,” which has five mediation assistants who help police contact the public and support them through difficult situations. The mediation assistants also provide public information sessions; a recent session helped Turkish mothers understand signs that their children may have a drug problem.

The police also take care to communicate with communities in advance of particular police actions, such as a series of arrests in a drug case, which may cause local controversy. They communicate their intentions to a variety of local partners such as non-profit organizations, local mediators and street educators. The police share what information they can at each stage of the operation: the day before, they will let them know that warrants have been issued. As the operation proceeds, they release additional information about the basis for the arrest and the operation. The process also helps track local reactions, and supports further information releases to counter inaccurate rumors.

In ethnically diverse communities and communities of recently-arrived immigrants, it is important to make services and information available in the languages that are used locally. In communities with low literacy rates, it may be necessary to explore communication through local radio, or through outreach efforts to schools, community centers and places of worship.

In the United Kingdom, many forces now have three way radios which allow them to call a translator if they need to communicate with a non-English speaker. The Strathclyde Police have a card with over 100 languages written in English and the national script which allows non-English speakers to point at the relevant language and a translator will be called.

A large number of Polish migrants have settled in the City and Holbeck area of West Yorkshire in the United Kingdom. Recognizing this trend and hoping to encourage better communication, a group of local police officers took a twelve-week Polish language and culture course delivered by Polish students at a local university. Officers attended a weekly lesson and reported enjoying the classes. The course provided enough Polish for officers to greet and have simple conversations in Polish, and communicate important information in an emergency.

The Basic Skills Agency, in association with South Wales Police and Cardiff City Council's ESOL Service, has produced "Police ESOL," a course that teaches English as it builds relationships between law enforcement officers and communities where English is not their first language.

UNITED KINGDOM

Police ESOL

In 2003, the Basic Skills Agency, in association with South Wales Police and Cardiff City Council's ESOL Service, has produced "Police ESOL"; an English language training pack for *English Speakers of Other Languages* (ESOL).²³⁴ "Police ESOL" was originally designed with a view to strengthening links with the increasing number of asylum seekers living in Wales, but has since been expanded to develop English language skills in order to improving communication between the police and black, Asian and minority ethnic communities. Police ESOL is a course in which police participate teaching English thus building relationships between law enforcement officers and communities. It focuses on providing students with practical knowledge about law and policing in the United Kingdom, including the police structure, domestic violence, racism and dealing with an emergency. Each session is intended to give students confidence in the police, a sense of what they do and an understanding of United Kingdom laws, while developing core written and spoken English skills. Building a more direct relationship between the police and minority communities who are learning English can reduce the fears that have traditionally prevented racial incidents or domestic violence from being reported and can allow those participating in the training to raise issues of local concern with officers.

Specialized Units

Specialist units with particular skills are created to respond to specific issues and/or communities at times of need. (These are distinguished by their more operational focus and approach from the diversity units discussed in Chapter VII which are created

to work on diversity issues across the police.) Specialist units can help to avoid ethnic profiling and reduce perceptions of discrimination in as much as they are a specific and visible response to the issue. Special units are typically composed of officers' with specific skills, often language or cultural skills. Some units are composed of minority officers who normally perform other duties but are available in response to arising needs in communities of their ethnic origin. Other units have varied personnel composition, but dedicate special resources to reach out to particular communities.

In the Netherlands, the National Diversity Expertise Centre (LECD) has an expert trouble-shooting group of approximately 50 police officers of different ethnic backgrounds who are seconded to the group for up to 80 hours a year on an as-needed basis. The expert group can be called on to troubleshoot problems in multi-ethnic areas. The team not only addresses the problem, but also assists the police service in identifying any relevant institutional issues, such as lack of minority representation in the law enforcement agency.

The “dialogue police” in Stockholm, Gothenburg, and Malmoe protect fundamental rights such as freedom of religion, speech, press and opinion. In practice, they largely work on demonstrations. The dialogue police function as a bridge between demonstrators and the police, working to build trust with minority groups and political organizations. The police say that the initiative has facilitated contacts with groups they would not otherwise reach with any frequency.

Special units do not necessarily focus on language or cultural skills relevant only to policing minority communities. The London Metropolitan Police's special unit described in the case study below, includes very broad-ranging skills and has responded to minority community among many other matters.

UNITED KINGDOM

London MPS Cultural and Communities Resource Unit²³⁵

In 2003, the Metropolitan Police Service formed the Cultural and Communities Resource Unit (CCRU) following investigations involving black and gay communities in London which had highlighted the difficulty in gaining access to communities that are traditionally suspicious of the police. Black and gay officers were drafted in and provided crucial assistance to those investigations.

The unit runs a confidential database of officers who volunteer their expertise in a particular area. Officers heading particular investigations or operations can contact the unit to request officers with the expertise they require. The database records a

variety of individuals with “life and professional skills” such as the ability to speak other languages, knowledge of ethnicities and faiths, but also professional experience of dealing with child abuse, black magic, hostage situations, or skydiving. Early successes include using an Arabic-speaking officer to build trust with the Algerian community in London, or assistance provided in the investigation of the murder of a parachutist by an officer who was a trained sky-diver.

While special units serve important operational purposes, they should be seen as a complement to, rather than a replacement for, broader efforts to build trust and confidence. Their assistance is clearly valuable during sensitive operations, and may avoid or reduce risks of ethnic profiling, but they are not designed or structured to address everyday issues of discrimination in law enforcements’ relations with local communities.

Community Involvement and Consultation

Community consultation seeks to obtain the perspectives and inputs of specific groups and communities into specific aspects of law enforcement, such as discrimination and ethnic profiling. It is distinct from community policing which is a law-enforcement generated model intended to permanently inform law enforcement operations. Community consultation may be ongoing around a specific issue, but may also take place on an episodic and responsive basis as issues arise.

The United Kingdom has extensive consultation mechanisms around stop and search which are mandated by law. Some of these mechanisms are described in the following case studies.

UNITED KINGDOM

London Metropolitan Police Service Consultation Structures

British law requires police and police oversight authorities to promote public confidence in their forces’ use of stops and searches by presenting their statistics for scrutiny by the community and explaining the use of the powers locally.²³⁶ In most forces this takes place through monthly local area community-police consultative groups (CPCGs).

London's 23 boroughs each have a CPCG open to the public that discusses local policing issues. In the London borough of Lambeth the CPCG's stop-and-search monitoring group meets monthly. It consists of community members and local police officers. The group looks at the numbers of stops carried out under different legal powers, fairness and effectiveness. In the case of "Operation Blunt 2," a mass stop-and-search operation using portable metal detectors targeting knife crime and known offenders, group members contributed to the community impact assessment for the operation, attending briefings for officers, and subsequently accompanied police during operations to observe the conduct of stops and searches and assess public opinion.

Since 2006, the MPS have published monthly stop and search data disaggregated by borough on their internet site. Each borough provides data on the numbers of stops and searches conducted under different powers; rates of search by ethnicity, sex and age; reasons for stops and searches; and the numbers resulting in arrest. Since 2008, the MPS have included borough data on section 44 anti-terrorism stops and searches in a similar format.

UNITED KINGDOM

Muslim Safety Forum

The Muslim Safety Forum (MSF) is a coalition of leading Muslim organizations formed in 2002 in response to the disproportionate impact of counter-terrorism policing on Muslim communities.²³⁷ The MSF works with the Metropolitan Police Service (MPS) and the Association of Chief Police Officers (ACPO) to build better police-community relations. It cooperates with the Independent Police Complaints Commission (IPCC) to develop better awareness of complaints processes. The MSF has also worked closely with the Counter Terrorism Command and MPS to review legislation and operating procedures and analyze the impact of counter terrorism stop and search powers on Muslim communities in London and at London airports. Working with a London mosque, the MSF piloted an Islamic induction program for new police officers, soon to be implemented in other areas. This experience will contribute to a best practice handbook for the London MPS on training for new recruits.

Community Stop and Search Scrutiny Panels: West Yorkshire Police and Suffolk Constabulary

The West Yorkshire Police and Suffolk Constabulary panels are the only advisory group structures in the United Kingdom that directly examine stop forms.

The West Yorkshire Police Scrutiny Panels focus on hate incidents and stop and search; they meet monthly in each district. Each panel has between 8 and 20 members from other public agencies and local communities. The police representation on the panels varies, but the guidelines require the presence of at least one officer of inspector level.

Each panel meeting examines at least ten stop and search forms; five stop and searches of ethnic minorities and five selected from all available forms. Forms are randomly selected by community members in advance (all personal information is removed). The officers who conducted the stops supply a photocopy of their pocket book or supplemental report to provide fuller information about the circumstances of each stop to the panel. Panel members examine the data, ask questions, determine whether the forms have been completed correctly, and whether the grounds for the stop were adequate. Several divisions have recently launched youth scrutiny panels, in recognition that it was hard to attract young people to the general scrutiny panels. This initiative is in its infancy, but early panels were well attended with 14-20 young people, who are given some background information on stops and searches, and then scrutinized a selection of stop forms and can ask questions.

The West Yorkshire Police has recently introduced an electronic stop and search system, which allows stops to be recorded on a BlackBerry® mobile device. (Please see Appendix A for the West Yorkshire BlackBerry® form.) This creates real-time data on stops and searches that can be actively compared to local crime maps. This system has just been rolled out and scrutiny panels are in the process of working out what stop data they need for effective monitoring and how best to display it. The panels are also given data based on local community satisfaction surveys, which feeds into their scrutiny. One of the greatest challenges of the panels is the lack of legal expertise and knowledge of stop-and-search practices among civilian panel members. Stop Hate UK, a national charity working supporting victims of hate crime is providing on-going training on hate crime and stop and search.

An independent evaluation found that panel members view the scrutiny panels as providing accountability and transparency, making stops and searches equitable, and promoting confidence in stop-and-search practices.²³⁸ The fact that officers are required to regularly submit further information about their stops means that both

officers and their supervisors (who are required to sign off the forms) are aware that their practice is being scrutinized. The scrutiny panels are organized by the police, and are thus embedded within institutional structures and more likely to feed into operational decision-making. There is clear evidence of police commitment to the panels and willingness to respond to problems raised. The evaluation found improvements in the quality of recording and the supervision of that recording.

In 2008, the Suffolk Constabulary formed a stop and search reference panel. Research conducted by the Ipswich and Suffolk Council for Racial Equality (ISCRE) found that in Suffolk black people were stopped at a rate 9 times greater than the rate for white people; higher than the national average, and in some rural parts of the county this increased to rates as high as 22 to 1.²³⁹ This research led to the development of a stop and search scrutiny panel organized by the Equality Council, sitting independently of the police. The group meets monthly in the evening at different locations around the county. The group scrutinizes district-wide performance, looking at all stops and searches of people from ethnic minority backgrounds. Forms are reviewed in advance of each monthly meeting by the Equality Council and a number are brought forward to the police for discussion at the meeting. The police provide information on the stops to the group which is then discussed. The panel also discusses complaints about stop and search reported by third parties; monitors the impact of the use of stop and search in the community; and contributes to the forces' stop-and-search policy, procedures and training. (Please see Appendix A for the Suffolk stop form.)

The Suffolk scrutiny panel has wide and diverse community participation, encouraged by the independence of the Equality Council. Meetings are challenging and, because community members have a good understanding of the law and context surrounding stop-and-search practice, provide a real opportunity to hold officers accountable for their actions. Where officer completion of stop forms is done well, they get positive feedback. Where forms are poorly completed and the grounds for the stop are questionable, follow-up action ranges from words of advice to management action. Some officers and sergeants have been encouraged to attend the meeting in order to properly understand the impact of their actions. The reference group is currently exploring how to include quantitative stop-and-search data in their scrutiny, and ensure that discussions at the reference group feed into operational decision-making.

In Ireland, the Inter-Racial Cultural Office holds an annual consultation meeting with ethnic minority communities to discuss best practice, minorities' needs and concerns, the work of ethnic liaison officers, among other topics. In 2008, the research unit of the Inter-racial Cultural Office distributed questionnaires to gauge minorities' opinions of the police. Ireland also has local consultation forums, and superintendents are required to meet with minority groups in their district four times a year to discuss

their needs, and problems, and hear about what the police are doing. These vary considerably in attendance and quality. The most interesting is the Dublin North Central Divisional Forum.

IRELAND

Dublin North Central Divisional Forum with New Communities²⁴⁰

Eighteen percent of the population of Dublin North Central is comprised of ethnic minorities, including many recent migrants. The Dublin North Central Divisional Forum engages with new communities and ethnic minorities, and works closely with community representatives in setting agendas and all procedures.

The Store Street Garda station, which organizes the meetings, makes considerable efforts to inform and engage different segments of new communities. It contacts non-governmental organizations and community representatives and posts public information about meetings. Community Gardai are asked to invite individuals from their local beats to meetings. Following the lead of the local Chief Superintendent, the local Gardai, especially the community Gardai, take these meetings seriously and attend in substantial numbers.

Forum discussions cover a wide range of issues such as crime, the environment, housing, traffic. The Gardai inform community members about their actions relating to diversity, such as follow up on complaints of racially motivated crime, and responses to problems raised by community members. Community members also comment on Gardai actions.

Examples of good practice also exist in the use of community consultation in highly sensitive counter-terrorism situations. In Scotland, the Strathclyde Police have an on-going structure of “community advisors” whom they called to assist the law enforcement response when terrorists bombed Glasgow airport in June 2007.

Strathclyde Police's Counter-Terrorism Community Consultation²⁴¹

The Strathclyde Police has some 38 independent and/or “community advisors,” recruited from different religious, cultural, ethnic, and lifestyle backgrounds who provide strategic or tactical advice on community issues. They also comment on policy and assist in operational matters where specialized knowledge is required. Advisors are vetted to the same standard as a police officer.

Immediately after the June 2007 terrorist attack on Glasgow airport, Strathclyde Police invited community advisors into the police headquarters to follow events and receive regular operational briefings. The group met for four days following the incident, and reviewed all the press releases and the statement issued by the chief constable. The advisors were able to feed the communities concerns into the process and provide opinions on the appropriate approaches.

An immediate concern was the need for public reassurance. For Muslim communities, this involved safety from both terrorist threats and possible hate crimes. Community advisors encouraged police to conduct highly visible patrols in ethnic minority neighborhoods and places of worship. Advisors participated in some patrols and facilitated exchange of information between the community and the police.

The advisors also participated in operational decision-making. In the days following the attack, it emerged that a vehicle belonging to one of the suspects was parked outside the Forth Street Mosque in the city. The advisors worked with the police and Mosque Committee to negotiate appropriate access. The police waited until prayers had finished before carrying out “controlled disruptions” and forensic investigations. The police were careful in their media statements to make clear that there were no links between the mosque and the vehicle.

Community consultation presents particular challenges in immigration or border controls where there is no “community” per se. Nonetheless, consultation is possible, as demonstrated by the case studies of consultation by the Greater Manchester Police in Manchester Airport, the National Accountability Board for Schedule 7 anti-terrorism stops in airports and the United Kingdom Border Authority.

The United Kingdom Borders Agency (UKBA) holds regular consultations or “stakeholder meetings” with local community organizations, NGOs, lawyers, and other interest groups. Previous meetings in Belfast highlighted difficulties in accessing immigration services as there is no UKBA office in Northern Ireland, forcing immigrants

to travel as far as Liverpool to access services. In 2010 the UKBA opened a local Belfast office that will provide a full range of integrated services, in response to the issues raised.

UNITED KINGDOM

National Accountability Board for Schedule 7 of the Terrorism Act

Schedule 7 of the Terrorism Act 2000 provides legal power to police officers to stop, question, search, and detain people without any reasonable suspicion when people are traveling through ports. In 2010, counter-terrorism authorities formed a National Accountability Board for Schedule 7 with representation from statutory bodies and civil society. The board is to act as a “critical friend” to scrutinize, challenge, and offer advice and recommendations on equality, diversity, and human rights issues. The board has reviewed the numbers of Schedule 7 stops, ethnic make-up of those stopped, and outcomes of stops and complaints.

NGOs and community organizations have raised concerns about the representation on the National Accountability Board for Schedule 7 and a lack of transparency about their meetings and outcomes of the board’s work. To date, Schedule 7 data are still not reviewed at a local level alongside other stop and search powers.²⁴²

UNITED KINGDOM

Manchester Airport Independent Advisory Group²⁴³

The Airport Division of the Greater Manchester Police formed an Independent Advisory Group (IAG) at the airport. The airport IAG is made up of 8 to 10 representatives from the airport industry and surrounding area—such as representatives from airlines, ground staff, union representatives, and members of the chaplaincy. This resulted in a diverse group in terms of sex, age, ethnicity and sexuality.

The group meets quarterly to discuss all aspects of law enforcement at the airport. They have been consulted on the use of counter-terrorism stop and search powers in the airport, and helped to design a leaflet on these powers that is given to the people stopped.

As the members of the group are professionals who work in the airport they are less critical than other British community consultation groups, and tend to support the heightened airport security. Yet the consultation has reportedly been useful.

UNITED KINGDOM

Manchester Airport Critical Incident Response²⁴⁴

The Airport Division of the Greater Manchester Police also reaches out to local communities as the need arises. For example, a group of Syrian women and children were detained after traces of explosives were detected on their bags. They were released when it was found that some Middle Eastern perfumes have similar chemical compounds to explosives. Their family members in the Manchester area felt that they had been detained because of their ethnicity and national origin. The Community Race Relations Advisor acted as a liaison with the Airport Division which invited the family and representatives of the local mosque to inspect airport security. Airport Division officers also made a presentation at the mosque and answered questions. Both sides gave positive feedback, and the police gained deeper insights into the concerns of some groups using the airport.

Working with Hard-to-reach and Hard-to-hear Groups

The terms “hard-to-reach” and “hard-to-hear” are not a technical description of specific communities, but reflect the fact that law enforcement will always have difficulty establishing a dialogue with certain groups. The largest of these groups is young people; others are Travellers and illegal migrants.

In the wake of terror attacks in Madrid and London, certain sectors of Muslim communities, particularly the more conservative, emerged as a high-priority “hard to reach group.” Efforts to build bridges to Muslims confront the fact that there are many Muslim communities, of varied national origin, ethnicity, and religious belief and practice. Further compounding the challenge is the fact that there are very few Muslim law enforcement officers in Europe, and few non-Muslim officers are familiar with Islam.

SWEDEN

Special Initiatives Working with Hard to Reach Groups

In 2005 the County of Stockholm Police Service launched a new strategy, opening 15 new local police stations and deploying mobile police stations on weekends in high crime areas of Stockholm. In 2010, the number of local police stations was increased to 27. The stations increase community outreach and cooperation with social service providers.

The strategy includes multiple initiatives: youth councils; volunteers; a support center for young crime victims and offenders; a cooperative council of borough commanders; a collaborative framework for relations between the police and local schools; and “Nova”—an initiative engaging some 600 young people involved in violent or organized crime. Two of these: youth councils and volunteers are looked at more closely below.

Police leaders state that in addition to improving police-youth relations, the initiatives have increased awareness of ethnic profiling more generally. More positive involvement with people in their own neighborhoods has provided lower rank officers as well as borough commanders with greater insight into residents’ living conditions and perceptions of the police.

Youth Councils

Stockholm County Police’s youth council first met in September 2005, following the Paris riots and violent clashes between youth and police in Ronna, Stockholm. The first meeting was turbulent, with several young people declaring an outright “hatred towards the police.” Since then, 32 youths, most of ethnic minority origin, have joined the county-wide council. At council meetings, police discuss their role with youth representatives, and young people can raise issues of police conduct. In 2007, eight additional local councils were established; each led by the local borough commander, demonstrating that youth outreach is taken seriously. The Stockholm Police Service explains that council members become ambassadors to other young people, enhancing trust and understanding between youth and police.

Volunteers

Based in part on the British “Community Support Officer” model, the Stockholm police began recruiting volunteers in 2004. Several hundred volunteers between the ages of 18 and 84 have since been trained. Although under Swedish law volunteers have fewer powers than their British counterparts, they are given mandatory training and have become an essential aspect of neighborhood policing. Indeed, in 2008, the volunteer project became a formal part of the police authority in Stockholm and currently some 30 local police stations work with volunteers. Their tasks are decided locally, with the main objective of building trust between the police and neighborhood residents. The Stockholm Chief of Police stated that: “The volunteer program is incredibly important to us. It provides us with a possibility of reaching out to groups of people we would otherwise not be in contact with.”

UNITED KINGDOM

Strathclyde Police's Operation Reclaim

Operation Reclaim began in 2004 in response to racist attacks on asylum seekers in North Glasgow. Young asylum seekers reported that they were scared to use public spaces where they lived, and asylum seekers failed to use police services.

Operation Reclaim provides a variety of evening sporting and entertainment activities for all young people. The police provide visible presence to ensure that young people feel safe to participate in sports, fitness, dance, and drama classes. Young people receive professional coaching, counseling, drama performances, participate in a football league, and have been visited by pop stars.

Operation Reclaim has grown dramatically and now operates in five areas of North Glasgow with 1,800 participants. Originally aimed at asylum seekers, it attracts young people from all backgrounds, and has helped to break down barriers between youth of different backgrounds and from areas where there had been territorial conflict.

The police officers who take part are the same local community officers who police these areas daily; the program has helped them reach young people, and encouraged crime reporting and other engagement. The project has reduced youth violence and disorder by 42 percent across the five areas. It has won awards and secured funding for further expansion and continuation.²⁴⁵

UNITED KINGDOM

Fair Cop—Engaging Young People through Social Media

Fair Cop is an independent interactive website that uses social media tools to engage young people and communities in discussions about policing and justice issues. Fair Cop is run by Public Achievement, a Belfast-based organization that uses social media solutions, such as film-making, campaigning, and social media tools such as Twitter and Facebook to encourage youth involvement in public affairs. The Fair Cop website was developed based on the findings of the report “Beyond the Margins—Building Trust in Policing with Young People” which was undertaken as part of the Northern Ireland Policing Board’s investigation into young people and policing. The report recognized that young people are often alienated from police and that the usual methods police use to “engage” communities do not reach young people.

The website provides an interactive forum utilizing forms of media more likely to engage young people. The site shares news, articles, films and commentary on policing and justice issues, and allows people to post their own comments, “tweets,” articles, films, or commentaries in response. The site also live streams relevant policing events, providing access to meetings that young people would often not attend.²⁴⁶

IRELAND

Improving Police Relations with Travellers²⁴⁷

In Finglas, as in many areas, relations between Travellers and police were hostile. Travellers reported police mistreatment and harassment. In 2006, Gardai raided a Traveller site to execute outstanding warrants against a number of persons. The raid was conducted by a large force of officers. Travellers felt that the number of Gardai involved was disproportionate to the operation, and stigmatized the residents; some Travellers reported rude, insulting and abusive manner by some of the Gardai. In response to a complaint, a Gardai inspector arranged a meeting between Travellers’ representatives from the site and officers from the warrant section and community Gardai. They agreed to pursue a more cooperative approach. The Gardai put in place a “clinic/facility” where Travellers could come and check for outstanding warrants. This worked well for some time, but then warrants again built up. This issue together with a change in regulations requiring photo ID created a new need for a clinic/facility, which was again established. It was discontinued once the immediate needs were met.

Quarterly consultation meetings were also established between Travellers and Gardai in Finglas. These have provided an opportunity for Travellers to identify their policing needs and priorities, have increased trust and understanding, and promoted relationship building, joint problem solving and Garda accountability.

In addition, community Gardai have made communication and contact with Travellers part of their beat. Residents say this is a major change as Gardai would previously only visit in response to a problem, and their presence was viewed as hostile and a sign of trouble. The Gardai now meet regularly with the Traveller community, and a Traveller youth worker has arranged for the Gardai to give talks to groups of Traveller youth and accompany them to the Garda training College for an Open Day.

A positive change noted by Travellers and Gardai is that many Travellers now go directly to the Garda station if they require a service.

A 2006 British study of efforts to build law enforcement relations with Muslim communities emphasized that initiatives must be locally-based, transparent, and rooted in an understanding of faith. If possible, outreach efforts should include diverse voices from communities, and avoid direct or implicit labeling “good” versus “bad” Muslims, which can generate or aggravate divisions in the Muslim community.

Some experts argue that the strategy of encouraging moderate Muslim voices to create a bulwark against more radical forms of Islam fails to understand different streams of Islam, and is as likely to create divisions and problems as it is to advance solutions. This critique notes that moderate Islamic voices have little relation with the communities or the individuals who are attracted to radical forms of Islam, that Salafist groups are not monolithic, and that many conservative Muslims are highly critical of violent jihad.

UNITED KINGDOM

London Metropolitan Police Service’s Muslim Contact Unit

Established in January 2002, the Muslim Contact Unit (MCU)²⁴⁸ works with Muslim communities in London as partners in confronting the al Qaeda terrorist threat. The MCU developed partnerships aiming to reach the youth being drawn towards al-Qaeda. The MCU works with several London Muslim groups including Salafist and Islamist groups which, they argue, have the greatest knowledge and credibility to counter al-Qaeda. Robert Lambert, one of the founders of the MCU, argues that “...young recruits to al Qaeda might easily be rehabilitated to nonviolent politics if credible figures in their communities were encouraged or facilitated to undertake negotiations to that end. Such negotiations form the cornerstone of the police and Muslim community interventions in London.”²⁴⁹

The MCU draws on lessons from fighting the Provisional IRA in Northern Ireland. A vital lesson was that anti-terror measures that viewed an entire community as suspect and treated them accordingly ultimately increased sympathy for and recruits to terrorism. The MCU’s founders argue that it is vital to distinguish individual terrorists from the communities in which they seek support. The unit seeks to reassure Muslim communities that they are not suspects simply because al Qaeda terrorists claim to be acting in the name of Islam.

The project has been positively evaluated, but has also faced criticism for “appeasing extremists.” The MCUs approach challenges the mainstream view that conservative Muslim groups such as Salafis are extremists and therefore part of the problem rather than part of the solution. The MCU treats Salafist and Islamist groups as effective partners whose confidence and trust is necessary to countering the terrorist threat.

General principles of good practice in community outreach:

- ▶ The nature and purpose of community engagement needs to be clearly defined. Ensure that all those participating understand what is meant by “community involvement” and what are the aims and expected outcomes of that involvement. Be clear about who should be involved and why.
- ▶ The methods of involvement must be tailored to the purpose of engagement. Employ a combination of mechanisms to obtain a broader picture of the issues that need addressing and involve a wider number of voices in decision-making.
- ▶ Involve a mix of local persons broadly representative of the individuals, groups, businesses, or organizations considered to have an interest.
- ▶ Take steps to ensure that all parts of the community are involved, including marginalized groups, vulnerable people, and others who may be hard to reach or hear. This includes being sensitive to divisions within communities and the use of appropriate tools of engagement for different groups.
- ▶ Define clear accountability structures including terms of reference and protocols for involvement mechanisms. It is important that community members understand how their input will be used.
- ▶ Help communities build the capacity to hold the police accountable through enhancing necessary skills and expertise.
- ▶ Community policing functions through a geographical or neighborhood approach rather than an ethnically-based approach. Law enforcement should contact all local organizations, rather than single out religious institutions or organizations representing specific minority groups which may risk stigmatizing them.
- ▶ Communication must be continued through changes in law enforcement personnel and through the evolution of the groups in the community.
- ▶ The community must be treated as a partner, listened to—including on sensitive issues of ethnic profiling and discrimination—and responded to through concrete actions. A partnership approach should be taken through each step of the process; including planning and agenda setting.
- ▶ Officers must be sensitive to potentially controversial events and take measures to manage and mitigate negative impacts on community relations.
- ▶ Materials and meetings must be translated into appropriate languages.
- ▶ Senior police leadership must support consultation initiatives and emphasize the importance of building relations with ethnic minority and immigrant commu-

nities. This can be demonstrated by regular senior leadership participation at events.

- ▶ Community members may need training and support in order to hold police accountable for ethnic profiling. Guidelines and rules on leading a meeting, chairing, and taking minutes will also enhance the quality and accountability of community groups.
- ▶ Working with hard to reach and hard to hear groups may require creative solutions that depart from normal channels.
- ▶ Resources should be allocated to support community outreach and involvement.

Appendix A: Sample Stop Forms

Suffolk, UK Stop Form



Encounter / Stop and Search

The power to Encounter / Stop and Search is critical to the role of the police. When used fairly it is the key to the development of good relations between police and communities. Use the power wisely and appropriately.

www.suffolk.police.uk

22 - 002 - 17

July 2011

Reasons for Search/Arrest code

Stolen property (s1 PACE)	A
Drugs (s23 Misuse of Drugs Act)	B
Firearms (s47 Firearms Act)	C
Offensive weapons (s1 PACE)	D
Going equipped (s1 PACE)	E
Other power (see Annex A of Code A PACE)	F
Terrorism s.47A(2) (vehicle/occupants)	G
Terrorism s.47A(3) (pedestrians)	H
Anticipated violence (s60 CJPO Act)	J
Articles to cause criminal damage (s1 PACE)	K
Arrested other offence	L
Terrorism s.43	M

Outcome code

No further action	1
Advised	2
Verbal warning	3
Arrested	4
Cannabis warning	5
Penalty Notice issued	6
Other	7

SUFFOLK CONSTABULARY

Copy for police (white)
Copy for person stopped (yellow)

Person only search / Vehicle search / Encounter
(delete as appropriate)

First Name(s)*

Family Name*

*(if name not given, use space to give a description)

Gender M F DoB

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

 A/Age

IC Code SDE Code

Address

Post Code

Vehicle Type VRM

Object of Search and Grounds

.....
.....
.....
.....
.....

Encounter/Search

Encounter/Search (if different location)

Date

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

Time H

H	H	M	M
---	---	---	---

H	H	M	M
---	---	---	---

Loc'n

SNT Code

Search Code Outcome Code Arrest Code

Damage caused* Injury caused*

*Details

Stopping / Searching Officer

Epaulette No. Other officers Team/Unit

Tick to request a Youth Nuisance or ASB letter

Please detail circumstances below / Additional Information

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Thinking about the experience of being searched by your local police on this occasion. Which of the following statements do you agree with?

Q1. I understand the reason I was searched?

Yes No

Q2. During the search I was treated professionally, respectfully and with dignity

Yes No

Signature

If applicable, date Supervisor's letter sent

Supervisor's Signature

Epaulette No.

Stops Database Ref. No.

SUFFOLK CONSTABULARY

Copy for police (white)
Copy for person stopped (yellow)

Person only search / Vehicle search / Encounter
(delete as appropriate)

First Name(s)*

Family Name*

*(if name not given, use space to give a description)

Gender M F DoB

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

 A/Age

IC Code SDE Code

Address

Post Code

Vehicle Type VRM

Object of Search and Grounds

.....
.....
.....
.....
.....

Encounter/Search

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

Encounter/Search (if different location)

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

Date

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

Time H

H	H	M	M
---	---	---	---

H	H	M	M
---	---	---	---

Loc'n

SNT Code

Search Code Outcome Code Arrest Code

Damage caused* Injury caused*

*Details

Stopping / Searching Officer

Epaulette No. Other officers Station/Team

Police powers to stop and search

- ▶ The law gives Police Officers powers to search you, anything you are carrying and any vehicle you are in.
- ▶ Police must use their powers of stop and search fairly and without unlawful discrimination. They will try to be considerate and courteous but they also need to be aware of their personal safety and the safety of the public.
- ▶ In some circumstances, Police Officers can use reasonable force to detain and search you.

What must a Police Officer tell you?

Before making a search, the Police Officer must take reasonable steps to tell you:

- ▶ that you are detained for the purpose of a search;
- ▶ their name (except for Anti-Terrorism searches or otherwise where the officer reasonably believes that giving their name might put them in danger, in which case their warrant number or other identification number shall be given) and the police station they are from;
- ▶ what they are searching for in general terms (the items they are looking for);
- ▶ what reason they have for searching you (excluding Terrorism powers and powers under Section 60 Criminal Justice and Public Order Act (CJPOA));
- ▶ what legal power or authority they have for searching you;
- ▶ that you are entitled to a full copy of this record now or at any time within the next 3 months.

If not in uniform they must show you their warrant card.

How far can a Police Officer search?

- ▶ If the search takes place in public, the Police Officer can usually only ask you to remove your outer coat, jacket and gloves – except for Terrorism and Sec 60 CJPOA searches.
- ▶ Out of public view you may be asked to remove your headgear, footwear or any item concealing identity.
- ▶ If the Police Officer needs to perform a more thorough search, it must be done out of public view by a Police Officer who is the same sex as you and out of view of any person of the opposite sex to you.

Searching of Unattended Vehicle

Application for compensation for any damage caused by the search may be made to the police station shown on the form or to:

**The Chief Constable, Suffolk Constabulary, Force Headquarters,
Martlesham Heath, Ipswich, Suffolk IP5 3QS**

Recording of an Encounter

When an officer requests a person in a public place to account for themselves, i.e. their actions, behaviour, presence in an area or possession of anything, a record of the encounter must be completed at the time and a receipt given to the person who has been questioned (unless it is wholly impractical to do so).

Complaints Procedure:

If you believe that you have been treated unfairly or unlawfully during a stop and / or search, you may make a complaint about any specific officer(s). To make a complaint:

- ▶ Go in person to any police station.
- ▶ Telephone, email or write to the Superintendent in charge of the police area where you were stopped and / or searched. For the relevant contact details telephone **01473 613500**
- ▶ Contact the Independent Police Complaints Commission (**www.ipcc.gov.uk**).
- ▶ Give consent for another person to complain on your behalf.

Community Reporting Centres

It is now possible to make a complaint using a Community Reporting Centre which is independent from the Police Service. These are currently situated at any Citizens Advice Bureau in Suffolk or at the Ipswich and Suffolk Council for Racial Equality situated at **46a St Mathews St, Ipswich, Suffolk, IP1 3EP** (telephone **01473 408111**).

For further information about stop and search and your rights please visit the Suffolk Constabulary website (**www.suffok.police.uk**), which includes information about stop and search in other languages. The Suffolk Constabulary is committed to increasing community confidence in its use of stop and search.

Reasons for Search/Arrest Code	
Stolen property	A
Drugs	B
Firearms	C
Offensive weapons	D
Going equipped	E
Other power	F
Terrorism s.47A(2)	G
Terrorism s.47A(3)	H
Anticipated violence s.60	J
Articles to cause criminal damage	K
Arrested other offence	L
Terrorism s.43	M

Outcome Codes	
No further action	1
Advised	2
Verbal warning	3
Arrested	4
Cannabis warning	5
Penalty Notice issued	6
Other	7



“We ask people about their ethnicity so that the fair treatment of different ethnic groups can be monitored (internally and independently) to improve the service we provide. Please look at this chart and tell me how you describe your ethnic identity.”

Self Defined Ethnicity Code	
Asian or British Asian (A)	
Indian	A1
Pakistani	A2
Bangladeshi	A3
Any other Asian background	A9
Black or Black British (B)	
Caribbean	B1
African	B2
Any other Black background	B9
Chinese or Other Ethnic Group (O)	
Chinese	O1
Any other ethnic group	O9
Mixed (M)	
White and Black Caribbean	M1
White and Black African	M2
White and Asian	M3
Any other mixed background	M9
White (W)	
British	W1
Irish	W2
Any other white background	W9



It is recognised that whilst dealing with the public, there may be occasions when the self-defined ethnicity classification is not obtained. In such circumstances the following codes should be used:	
Where the person declines to define their ethnicity	N1
When the person does not appear to understand what is required	N2
Where the officer's presence is urgently required elsewhere	N3
Situation involving public disorder	N4

Identity Code (IC) (officers' perceived ethnicity code)	
White – North European	1
White – South European	2
Black	3
Asian	4
Chinese, Japanese or any other South East Asian	5
Middle Eastern	6
Not recorded/Unknown	0

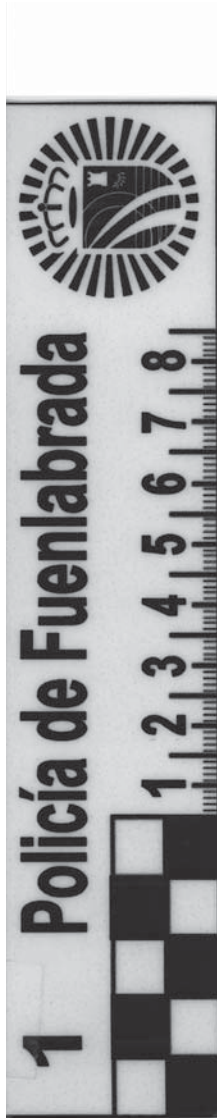
SNT Codes



WESTERN AREA		EASTERN AREA	
Forest Heath		Waveney	
Brandon	FB	Beccles & Bungay	WB
Mildenhall	FM	Southwold & Halesworth	WH
Newmarket	FN	Lowestoft North	WN
Mid Suffolk		Lowestoft Central	WC
Stowmarket	MK	Lowestoft South	WS
Mid Suffolk South	MS	Suffolk Coastal	
Mid Suffolk North	MN	Felixstowe & District	CF
Mid Suffolk Central	MC	Woodbridge & District	CW
St Edmundsbury		Kesgrave & District	CK
Bury Central	SC	Leiston & Aldeburgh	CA
Bury East/West	SE	Saxmundham & Framlingham	CS
St Edmundsbury Rural North	SN	Ipswich	
St Edmundsbury Rural South	SS	Ipswich South East	IS
Haverhill	SH	Ipswich South West	IW
Babergh		Ipswich Central	IC
Sudbury & Great Cornard	BS	Ipswich North East	IE
Babergh East	BE	Ipswich North West	IN
Babergh West	BW		



NOTES FOR GUIDANCE

- ▶ **If search is proposed:** Give **GOWISELY** – **G**rounds for search (or authority, e.g. s60 and s44); **O**bject of search; produce **W**arrant card if not in uniform; **I**dentify (your name); **S**tation to which attached; explain their **E**ntitlement to a copy of the search record; **L**egal search power exercised; explain “**Y**ou are being detained for the purpose of a search”.
- ▶ **Description:** If the person stopped does not give their name, use the space provided for names to record their description.
- ▶ **Search Grounds:** Indicate the reasons that give rise to suspicion. Record in bullet format.
- ▶ **Damage or injury caused:** If any injury or damage is caused, include full details on appropriate forms.
- ▶ **Searching / Stopping officer:** This must be the officer who conducted the search or stop. Write in **BLOCK CAPITALS**: rank, first name and family name, except in terrorism cases when epaulette number will suffice.
- ▶ **Copies:** The officer keeps the white police copy and gives the two yellow sheets to the person stopped.

Fuenlabrada, Spain Stop Form



Identificación de personas en vía/lugar públicos			
0002			
Fecha:			Hora de inicio de la parada:
Lugar de la parada:			
Apellidos:			
Nombre:			
D.O.I.:	Tipo:	Núm.:	
Nacionalidad:			Fecha nacimiento:
Población de nacimiento:			
Provincia:			Pais:
Hijo de:			y de:
Domicilio:			
Nº:	Piso:	Localidad:	
Provincia:			Teléfono:
Motivo de la identificación:			
Observaciones sobre la motivación:			
Se procede a registro personal:	Sí <input type="checkbox"/>	No <input type="checkbox"/>	Es positivo el registro:
			Sí <input type="checkbox"/>
			No <input type="checkbox"/>
Objetos intervenidos:			
Otros datos de interés:			
Vehículo relacionado:			Matrícula:
			Color:
Se formula denuncia:	Sí <input type="checkbox"/>	No <input type="checkbox"/>	Normativa denuncia:
Infracción:			
Ilícito penal	Sí <input type="checkbox"/>	No <input type="checkbox"/>	Actuación
			Falta penal <input type="checkbox"/>
			Imputado no detenido <input type="checkbox"/>
			Detención <input type="checkbox"/>
Tipo penal:			
Hora del final de la parada:			Agentes actuantes N.I.P.
 Ayuntamiento de FUENLABRADA <small>Consejería de Seguridad Ciudadana y Tráfico Servicio de Policía Local</small>			
 With financial support from the AGIS Programme European Commission - Directorate General Justice, Freedom And Security			
FL-0149			

Identificación de personas en vía/lugar públicos					
0002					
Fecha:				Hora de inicio de la parada:	
Lugar de la parada:					
Apellidos:					
Nombre:					
D.O.I.:	Tipo:			Núm.:	
Nacionalidad:				Fecha nacimiento:	
Población de nacimiento:					
Provincia:				País:	
Hijo de:				y de:	
Domicilio:					
Nº:	Piso:			Localidad:	
Provincia:				Teléfono:	
Motivo de la identificación:					
Observaciones sobre la motivación:					
Se procede a registro personal:		Sí <input type="checkbox"/>	No <input type="checkbox"/>	Es positivo el registro:	Sí <input type="checkbox"/> No <input type="checkbox"/>
Objetos intervenidos:					
Otros datos de interés:					
Vehículo relacionado:					
			Matrícula:	Color:	
Se formula denuncia:		Sí <input type="checkbox"/>	No <input type="checkbox"/>	Normativa denuncia:	
Infracción:					
Ilícito penal		Sí <input type="checkbox"/>	No <input type="checkbox"/>	Actuación	Falta penal <input type="checkbox"/> Imputado no detenido <input type="checkbox"/> Detención <input type="checkbox"/>
Tipo penal:					
Hora del final de la parada:		Agentes actuantes N.I.P.			
		Ayuntamiento de FUENLABRADA <small>Concejalía de Seguridad Ciudadana y Tráfico Servicio de Policía Local</small>			
				With financial support from the AGIS Programme European Commission - Directorate General Justice, Freedom And Security	
					F-0149

Normativa legal

El artículo 20 de la Ley Orgánica 1/1992, de 21 de Febrero, de Protección de la Seguridad Ciudadana, establece que "los agentes de las Fuerzas y Cuerpos de Seguridad podrán requerir en el ejercicio de sus funciones de indagación o prevención, la identificación de las personas y realizar las comprobaciones pertinentes en la vía pública o en el lugar donde se hubiere hecho el requerimiento, siempre que el conocimiento de la identidad de las personas requeridas fuere necesario para el ejercicio de las funciones de protección de la seguridad que a los agentes encomienda la Ley".

Cualquier persona identificada y/o registrada en la vía u otro lugar público tiene derecho a un trato correcto y esmerado por parte de los agentes de Policía que le han solicitado su documentación o le han registrado. Además, los agentes policiales están obligados a facilitarle información cumplida y tan amplia como sea posible, sobre las causas y finalidad de su identificación/registro, según establece el art. 5º de la Ley Orgánica 2/1986, de 13 de Marzo, de Fuerzas y Cuerpos de Seguridad.

Ante cualquier vulneración de las normas vigentes, puede Ud. presentar una reclamación directamente en la Policía Local, a través de cualquier escrito, o cumplimentando la hoja reglamentaria de Reclamaciones y Sugerencias que tiene a su disposición en nuestras dependencias de la C/ Hungría, s/n. También podrá acceder a dicha hoja en la página web del Ayuntamiento www.ayto-fuenlabrada.es, en el Servicio Municipal de Asistencia a la Víctima y en el Registro General del Ayuntamiento de Fuenlabrada.

Los datos recogidos en la presente ficha podrán ser utilizados de forma exclusiva para uso policial, cumpliendo todos los requisitos que establece la Ley Orgánica 15/1999 de 13 de diciembre de Protección de datos de carácter personal.

Se informa que los datos de carácter personal incluidos en el presente documento van a ser incorporados a los ficheros titularidad del Ayuntamiento de Fuenlabrada, con dirección en la Plaza de la Constitución Nº 1 de Fuenlabrada, para la gestión y control de los mismos. Podrá ejercitar los derechos de acceso, rectificación, cancelación u oposición dirigiendo una comunicación por escrito al Departamento de Atención Ciudadana del citado Ayuntamiento, a la dirección antes expuesta.

Formulario avalado por el
Programa AGIS de la Unión
Europea



With financial support from the AGIS Programme
European Commission - Directorate General Justice, Freedom And Security

El presente formulario está incluido dentro del Programa AGIS de la Unión Europea que apoya iniciativas encaminadas a buscar un enfoque coordinado y multidisciplinar de las distintas actividades relacionadas con la creación del espacio de libertad, seguridad y justicia así como la prevención y la lucha contra la delincuencia organizada en la Unión Europea.

En concreto, el formulario forma parte del Proyecto STEPSS (Strategies for Effective Stop and Search), que tiene como objetivo mejorar las relaciones entre los Cuerpos Policiales y las minorías étnicas y los procedimientos policiales, para prevenir prácticas discriminatorias.

Hungary Stop Form

ID check form (September–November 2007)

1. Time of ID check	1.1. Morning	1.2. Afternoon	1.3. Evening	1.4. Night	1.5. Dawn
----------------------------	--------------	----------------	--------------	------------	-----------

2. Place of ID check	2.1. Street	2.2. Pub/disco/etc	2.3. Park	2.4. Road	2.5. Other
-----------------------------	-------------	--------------------	-----------	-----------	------------

3. Gender of concerned person	3.1. Male	3.2. Female
--------------------------------------	-----------	-------------

4. Age of concerned person	4.1. 14–16	4.2. 17–18	4.3. 19–29	4.4. 30–39	4.5. 40–
-----------------------------------	------------	------------	------------	------------	----------

5. Ground of ID check:	5.1. suspicious object 5.2. intensive control 5.3. traffic control 5.4. security measure 5.5. finding a wanted person 5.6. suspicion of crime 5.7. suspicion of petty offence 5.8. prevention of an act jeopardizing public order 5.9. possession of legally prohibited object 5.10 other, namely
-------------------------------	--

If you indicated one of points 5.5 – 5.10, please describe briefly on what actual circumstances you based the measure:

6. Result of ID check	6.1. Arrest	6.2. Short-term arrest	6.3. Petty offence procedure	6.4. No further measure required
------------------------------	-------------	------------------------	------------------------------	----------------------------------

7. Based on the perception of the police officer, the concerned person is:

7.1. Asian	7.2. Arab	7.3. Caucasian	7.4. Black	7.5. Roma/Gypsy	7.6. Other
------------	-----------	----------------	------------	-----------------	------------

No civil monitor was present	
Civil monitor was present, no remark	
Civil monitor was present, remark made	
Remark:	

ID check form (November 2007- March 2008)

1. Time of ID check	1.1. Morning 06-12h	1.2. Afternoon 12-18h	1.3. Evening 18-22h	1.4. Night 22h-02h	1.5. Dawn 02-06h
----------------------------	------------------------	--------------------------	------------------------	-----------------------	---------------------

2. Place of ID check	2.1. Street	2.2. Pub/disco/etc	2.3. Park	2.4. Road	2.5. Other
-----------------------------	-------------	--------------------	-----------	-----------	------------

3. Gender of concerned person	3.1. Male	3.2. Female
--------------------------------------	-----------	-------------

4. Age of concerned person	4.1. 14–16	4.2. 17–18	4.3. 19–29	4.4. 30–39	4.5. 40–
-----------------------------------	------------	------------	------------	------------	----------

5. Ground of ID check:	5.1. suspicious object 5.2. intensive control 5.3. traffic control 5.4. security measure 5.5. finding a wanted person 5.6. suspicion of crime 5.7. suspicion of petty offence 5.8. prevention of an act jeopardizing public order 5.9. possession of legally prohibited object 5.10 other, namely
-------------------------------	--

If you indicated one of points 5.1 or 5.4 – 5.10, please describe briefly on what actual circumstances you based the measure:

If you indicated 5.2 please state below the order's number or date

If you indicated 5.3 please mark the type and estimated age of the vehicle

Type:	5.3.1 less than 3 years	5.3.2 3- 8years	5.3.3 more than 8
-------	----------------------------	--------------------	----------------------

6. Result of ID check	6.1. Arrest	6.2. Short-term arrest	6.3. Petty offence procedure	6.4. No further measure required
------------------------------	-------------	------------------------	------------------------------	----------------------------------

7. Based on the perception of the police officer, the concerned person is:

7.1. Asian	7.2. Arab	7.3. Caucasian	7.4. Black	7.5. Roma/Gypsy	7.6 Other
------------	-----------	----------------	------------	-----------------	-----------

Civil monitor was present, no remark	
Civil monitor was present, remark made	
Remark:	

West Yorkshire Police BlackBerry®

Course: BlackBerry - Microsoft Internet Explorer provided by West Yorkshire Police

FLASH_SIMULATION_WYP_BB_stops - Microsoft Internet Explorer provided by West Yorkshire Police

http://www.bishopgarth.com/training/v66/resources/blackberry/FLASH_SIMULATION_WYP_BB_stops.html

Corvus Mobile - Stop and Search Form

AAA

GPS Location Finding


A number of fields are automatically recorded for you, such as:

- Your employee number
- Serial number
- Stop Date and Time
- Stop Location

Your BlackBerry device uses GPS to find and record the Stop Location. This not only saves you time completing the form but also provides valuable intelligence and mapping features for WYP.

Topic 3 explains more about GPS and what to do if GPS is not available.

Click Next to continue.



Back Next

Quit Menu

Click Next to continue

Done

start West Yorks... Course: Bla... PPT New Mem... FLASH_SIM... Search Desktop 100% 15:20

Corvus - Microsoft Internet Explorer provided by West Yorkshire Police

File Edit View Favorites Tools Help

http://10.224.1.44:8400/corvus/Index.jsp

Corvus

Stop Details

Stop Date: 02 Jun 2009 0151

Stop Officer First Name: [Text Field]

Stop Officer Supervisor Number: [Text Field]

Stop Type: Search

Other Officer Badge: [Text Field]

Reason for Stop: [Text Field]

Unattended Vehicle: No

Injury Damage: No

Outcome: [Text Field]

Deployment Type: [Text Field]

Operation Name: [Text Field]

Stop Officer Badge: [Text Field]

Stop Officer Last Name: [Text Field]

Stop Officer Station: Pudsey Police Station

Other Officer Badge: [Text Field]

In Company of Others: No

Legal Power: [Text Field]

Evidential Property: No

Item Searched For: [Text Field]

Offences: [Text Field]

Grounds: [Text Field]

Breath Test Results: [Text Field]

Stop Location Details

BCU Name: [Text Field]

Ward Name: [Text Field]

Street Name: [Text Field]

Town Name: [Text Field]

Postcode: [Text Field]

Easting: [Text Field]

NPT Name: [Text Field]

District Name: [Text Field]

County Name: [Text Field]

Nothing: [Text Field]

Search Gazetteer

Person Details

Surname: [Text Field]

Date of Birth: [Text Field]

Officer Defined Ethnicity: 1 White - North European

Person Height (Ft): [Text Field]

First Names: [Text Field]

Gender: [Text Field]

Self Defined Ethnicity: W1 - White British

Person Height (In): [Text Field]

Search SEV

Done

start Discov... Logged... PH1 Sh... Suppor... Corvus... Micros... 720954 Jasc Pa... Local Intranet 100% 13:52

West Yorkshire Police Stop Receipt

To obtain a full written record of your encounter, produce this receipt at any West Yorkshire Police Station. Details of our locations, our **'Policing Pledge'** and information about your rights, can be found at:

www.wypa.org

West Yorkshire Police values your comments.

To leave feedback, please visit the following website:

www.westyorkshire.police.uk/stopandsearch

Or simply text your message starting with the word

'Feedback' to: **07950080249**



TO BE COMPLETED IN ALL CASES

Officer:
Contact details:
Reference No:/.....

Stop and Account Receipt

Stop and Search Receipt

Police Officers only - All searches

Authority for Stop and Search

- | | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|
| Section 1 PACE: | <input type="checkbox"/> | Section 44(1) Terrorism: | <input type="checkbox"/> |
| Section 23 Drugs: | <input type="checkbox"/> | Section 44(2) Terrorism: | <input type="checkbox"/> |
| Section 60 Weapons: | <input type="checkbox"/> | | |
| Section 43(1) Terrorism: | <input type="checkbox"/> | | |

180. (1.3.09)



Appendix B:

Legal Standards and Case Law

There is as yet no codification of “ethnic profiling” in European legal norms. Despite this, European non-discrimination law is among the most advanced in the world in defining unlawful discrimination and the tests that differential practices must meet if they are not to constitute prohibited distinctions. A growing body of case law of the European Court of Human Rights (ECtHR) is providing a clearer understanding of these standards as they apply to ethnic profiling as a form of both direct and indirect discrimination. The next sections discuss international and regional law and the case law of the ECtHR.

International Standards

International human rights treaties routinely prohibit discrimination in the enjoyment of protected rights, some of which are directly implicated by police action. Article 2(1) of the International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, entered into force March 23, 1976 (ICCPR), provides that:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Covenant rights that are especially relevant to ethnic profiling include “the right to liberty and security of the person,” which includes freedom from “arbitrary arrest or detention” (Article 9(1)) and the right to “be equal before the courts and tribunals” (Article 14(1)).

Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination,²⁵⁰ (“Race Convention”), provides: “In this Convention, the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” The Race Convention requires States parties to ensure non-discrimination in the enjoyment of enumerated rights, including two that are often implicated by the police practices addressed in this report: “freedom of movement” (Article 5(d)(i)) and the “right to equal treatment before the tribunals and all other organs administering justice” (Article 5(a))

EU Regional Standards and Case Law

Turning to European norms, Article 14 of the European Convention on Human Rights (ECHR) prohibits discrimination in the enjoyment of rights protected by the convention.²⁵¹ ECHR rights that are particularly relevant to the practices addressed in this report include the rights to liberty and security of the person (Article 5(1)) and fair trial rights associated with “the determination of [an individual’s] civil rights” and of “any criminal charge against him” (Article 6(1)). Ethnic profiling in its various forms also touches upon individuals’ right to respect for their privacy, family life, correspondence and home (Article 8); freedom of religion (Article 9) and assembly (Article 11); and freedom of movement (Article 2, Protocol No. 4).

Protocol No. 12 broadens the European Convention’s protections against discrimination by, among other things, prohibiting discrimination on any ground in respect of any right set forth in national law “by any public authority” (Article 1).²⁵² The Explanatory Report to Protocol No. 12 makes clear that this prohibition applies to discrimination “by a public authority in the exercise of discretionary power,”²⁵³ which would include identity checks, stops and searches, and surveillance activities by law enforcement officers.

While the legal norm against discrimination is universal and fundamental, not all distinctions or differences in treatment by public authorities, including law-enforcement personnel, constitute discrimination. The European Court of Human Rights has ruled that: “A differential treatment of persons in relevant, similar situations, without an objective and reasonable justification, constitutes discrimination.”²⁵⁴

The court has identified a framework for determining when a distinction or difference of treatment amounts to discrimination:

[T]he principle of equality of treatment is violated if the distinction has no objective and reasonable justification. The existence of such a justification must be assessed in relation to the aim and effects of the measure under consideration, regard being had to the principles which normally prevail in democratic societies. A difference of treatment in the exercise of a right laid down in the Convention must not only pursue a legitimate aim: Article 14 is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised.²⁵⁵

Applying this test to ethnic profiling in law enforcement, it is clear that the distinctions employed by officers in their law enforcement activities pursue a “legitimate aim.” But law enforcement actions must not only pursue legitimate aims, their use of distinctions based on ethnicity and similar criteria must also be both pertinent and effective.²⁵⁶ This requires “a ‘reasonable relationship of proportionality between the means employed and the aim sought to be realized’.”²⁵⁷ Thus even if a measure pursues a legitimate aim such as protecting the public against a terrorist act, any incidental infringement on protected rights must be necessary and proportionate to the aim. The European Court of Human Rights has found a distinction to be unnecessary where the same result could be achieved through an alternative approach that does not rely on differentiation.²⁵⁸

To summarize, European case law requires that ethnic profiling practices pass scrutiny under three principal tests if they are to establish a legitimate difference of treatment that does not constitute discrimination:

- **Effectiveness:** ethnic profiling practices may be considered effective if they are based on an objective statistical link between the ethnic criteria employed and the probability that persons captured by the profile committed or planned to commit the offense in question. A high probability of offending—that is, beyond a general statistical link—is essential for ethnic profiling to be demonstrably effective as a means of law enforcement.
- **Proportionality:** It must be shown that the benefits derived from using ethnic criteria in terms of increasing law enforcement efficiency outweigh the harm done through the real or perceived discriminatory impacts of the profile on the targeted individuals or groups.

- **Necessity:** The use of ethnic profiling is unnecessary if the same results achieved in terms of law enforcement could have been achieved through an alternative and non-differentiating approach.

Ethnic profiling practices that satisfy these standards may well be acceptable—though most uses of ethnic profiling do constitute prohibited discrimination.

The European Court of Human Rights applied the framework summarized above to assess a practice involving ethnic profiling in the case of *Timishev v. Russia*.²⁵⁹ The applicant in that case challenged Russian police officers' action in barring him from entering an administrative region because of his Chechen ethnicity²⁶⁰ pursuant to an official policy of excluding Chechens from that area.²⁶¹ The court held that the applicant had been subjected to different treatment in relation to his right to liberty of movement solely due to his ethnic origin and that the difference in treatment was not justified.²⁶² The court stated that

... no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society [S]ince the applicant's right to liberty of movement was restricted solely on the ground of his ethnic origin, that difference in treatment constituted racial discrimination within the meaning of Article 14 of the Convention.²⁶³

European case law has established, then, that if ethnicity constitutes an “exclusive” or “decisive” basis for law-enforcement action, it almost certainly constitutes discrimination—and is therefore a violation of Article 14 of the ECHR when it occurs in conjunction with a breach of another right protected by the convention. Similarly, the European Court has found that “a distinction based essentially on a difference in religion is not acceptable,”²⁶⁴ and the same is true for difference of treatment based exclusively on the ground of nationality.²⁶⁵

While Chechen ethnicity was the sole basis for the discriminatory practices found to violate the ECHR in *Timishev v. Russia*, in practice it is not always easy to prove that ethnicity was the exclusive or decisive basis for law enforcement action—such as a stop and search—that appears to be based on ethnic profiling. Indeed, ethnicity is rarely explicitly articulated as a reason for a stop; police more commonly give reasons such as: the person stopped was carrying something suspicious, tried to hide something, tried to avoid the officer, appeared nervous, seemed out-of-place, and similar rationales. It is often only when a pattern of identity checks or stops and searches is examined that a disproportionate focus on members of a particular group clearly emerges.²⁶⁶

When ethnicity has been one of a number of factors in a police practice that utilized ethnic profiling rather than the exclusive factor as in *Timishev*, ECtHR case law has been less settled as to whether and when the profiling practice constitutes discrimination.²⁶⁷ The European Court has, however, increasingly recognized the relevance of broad patterns of discrimination, established by statistical evidence and reports by human rights groups, in determining whether a Contracting State violated Article 14 of the ECHR.²⁶⁸

A landmark judgment issued by the Grand Chamber of the European Court in November 2007, *D.H. and Others v. the Czech Republic*,²⁶⁹ explicitly recognized indirect discrimination—patterns of discriminatory impact of a policy that is not necessarily designed with discriminatory intent—as a type of discrimination that be in violation of Article 14.

The Court has already accepted in previous cases that a difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group. ... [S]uch a situation may amount to “indirect discrimination,” which does not necessarily require a discriminatory intent.²⁷⁰

Although *D.H. v. Czech Republic* did not involve police action,²⁷¹ the Grand Chamber’s recognition of indirect discrimination would be equally relevant to police actions that constitute ethnic profiling. Thus even when ethnic profiling is established through inferences derived from broad patterns of police behavior and regardless of whether it can be proven to result from intentionally racist policies, if it entails a difference in treatment that is neither proportionate nor necessary, it will amount to discriminatory treatment under ECHR law. If the discrimination occurs in connection with a right protected by the ECHR, such as the right to liberty, it will constitute a breach of the convention.

In recent jurisprudence, the European Court of Human Rights has expressed concerns about patterns of disproportionality in police actions targeting persons of minority ethnic origin in the cases of *Gillan and Quinton v. United Kingdom* and *Marper v. United Kingdom*. Neither of these cases made an Article 14 discrimination claim, but in both the court flagged concerns with ethnic profiling. In *Gillan*, a case with important implications for police stop-and-search powers (discussed further below), the court noted that the counter-terrorism powers to stop and search without grounds based in reasonable suspicion presented:

The clear risk of arbitrariness in the grant of such broad discretion to the police officer. While the present case does not concern black applicants or those of Asian origin, the risks of the discriminatory use of the powers against such persons is a very real consideration [...]. The available statistics show that black and Asian persons are disproportionately affected by the powers.²⁷²

Similar concerns were echoed in the judgment in the case of *Marper v. United Kingdom* (a case which ruled that United Kingdom practices of gathering and indefinitely storing DNA, including of persons never charged or convicted, violated privacy rights) which noted the over-representation of ethnic minorities in the database.²⁷³

The court's ruling in *Gillan and Quinton v. the United Kingdom* establishes that stop and search must be based on reasonable suspicion in order to meet standards of lawfulness and respect privacy rights, and that United Kingdom counter-terrorism laws granting the police broad powers to stop and search persons without any requirement of reasonable suspicion are unlawful.²⁷⁴ In this case, the European Court of Human Rights held that:

[T]he powers of authorisation and confirmation as well as those of stop and search under sections 44 and 45 of the 2000 [United Kingdom Prevention of Terrorism] Act are neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse. They are not, therefore, "in accordance with the law" and it follows that there has been a violation of Article 8 of the Convention."²⁷⁵

Police in many EU countries have broad powers to conduct stops and searches, including under special preventive powers authorized for specific times and places. All such powers should be reviewed to assure compliance with standards established in *Gillan*.²⁷⁶

Immigration Enforcement Powers and Deficits in Current Non-Discrimination Provisions

European law does not apply similar protection against discrimination in the realm of immigration enforcement. Current EU immigration law creates an exception in the protection of third country nationals under Article 3.2 of the Racial Equality Directive (Council Directive 2000/43/EC) which derogates the principle of non-discrimination, allowing for differences of treatment on grounds of nationality, immigration process,

and the legal status of third country nationals. But third country nationals enjoy the same protection from discrimination on grounds of racial or ethnic origin as others.

The exclusion of nationality discrimination leaves a significant gap in protection against discrimination, both in the realm of border controls and immigration enforcement, but also in as much as immigration control drives a certain amount of ethnic profiling in domestic policing. In current law enforcement practices, it appears that at times allegedly legitimate differences based in nationality are in fact forms of discrimination that are based on race or ethnic origin—as with police profiling of minorities in their use of identity checks and stops to detect illegal immigrants. This exemption of the field of immigration from the prohibition against discrimination on grounds of racial or ethnic origin has been misused by member states to evade their obligation to ensure that asylum and immigration laws and practices are neither discriminatory nor have discriminatory effects, and has prevented EU law from fully addressing the problem of profiling.

The permissibility of ethnic profiling in immigration contexts is an area that is evolving in national and international rulings. In 2001, the European Court of Human Rights rejected a claim of discrimination in a case—*Cissé v. France*—that involved enforcement of French immigration laws.²⁷⁷ But the thinly-reasoned judgment did not make clear whether or to what extent this context was relevant to its decision. The European Court has condemned in strong terms the use of immigration grounds as a pretext for other purposes.²⁷⁸

National courts in Europe have taken divergent approaches to the question whether there is greater scope for ethnic profiling in an immigration enforcement context. In a 2001 ruling in the case of Rosalind Williams-Lecraft, the Spanish Constitutional Court accorded the police broad latitude, ruling that it is permissible for the police to “use the racial criterion as merely indicative of a greater probability that the interested party was not Spanish.”²⁷⁹ The court reasoned that when police controls serve the purpose of “requiring that foreigners in Spanish territory are obliged to have documentation which proves their identity and their legal status in Spain specific physical or ethnic characteristics can be taken into consideration as reasonably indicative of the national origin of the person who has them.” A dissenting judge noted that using race as a proxy for nationality makes little sense in what is “already a multi-racial society.”²⁸⁰

Williams-Lecraft appealed this decision before the United Nations Committee on Human Rights. In June 2009, the HRC ruled in favor of Williams-Lecraft, finding that she had been singled out for an identity check solely on the ground of her racial characteristics and that in making these characteristics the decisive factor in her being suspected of unlawful conduct, Spain was violation of article 26, read in conjunction with article 2(3), of the International Covenant on Civil and Political Rights.

The Committee considers that identity checks carried out for public security or crime prevention purposes in general, or to control illegal immigration, serve a legitimate purpose. However, when the authorities carry out such checks, the physical or ethnic characteristics of the persons subjected thereto should not by themselves be deemed indicative of their possible illegal presence in the country. Nor should they be carried out in such a way as to target only persons with specific physical or ethnic characteristics. To act otherwise would not only negatively affect the dignity of the persons concerned, but would also contribute to the spread of xenophobic attitudes in the public at large and would run counter to an effective policy aimed at combating racial discrimination.

[T]he Committee recalls its jurisprudence that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant. In the case under consideration, the Committee is of the view that the criteria of reasonableness and objectivity were not met.²⁸¹

The Spanish court's reasoning is also at odds with that set forth in 2004 by the United Kingdom House of Lords in the "Roma Rights Case."²⁸² The plaintiffs in Roma Rights claimed that U.K. customs officers stationed at Prague Airport subjected Roma to more intrusive and skeptical questioning than non-Roma when screening U.K.-bound travelers in an effort to detect potential asylum seekers.²⁸³ The opinion of Baroness Hale—whose proposed declaration finding discrimination was endorsed by the other four Law Lords constituting the House of Lords Appellate Committee—observed that the challenged practice "was not only unlawful in domestic law but also contrary to our obligations under customary international law and under international treaties to which the United Kingdom is a party."²⁸⁴ Even if the stereotype prompting the differential treatment—the assumption that Roma, being more likely than other Czech citizens to seek asylum might be "more likely to put forward a false claim"²⁸⁵—were based in fact, Baroness Hale concluded that this could not justify discriminatory treatment.²⁸⁶

The more rights-protective approach of the House of Lords may in part reflect the fact that accepting the use of non-white ethnic appearance as a valid proxy for non-European nationality increasingly goes against the demographic facts of an ever-more diverse and multi-ethnic Europe.

Appendix C:

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Notes

1. Rebekah Delsol, *Open Society Justice Initiative presentation*, LIBE Round Table on “Liberty and Security in Integrated Management of EU Border,” Brussels: June 30, 2008.

2. A “criminal profile” is constructed by analyzing the nature of a crime and the manner in which it was committed to develop guidance to help identify an unknown perpetrator. The underlying theory is that certain types of crime can be studied and common factors analyzed to build an offender profile of some predictive value to aid police investigations. Some, but not all, criminal profiles include race or ethnicity. Criminal profiling has not caused public controversy, although many criminologists challenge its efficacy. One impact study found that criminal profiling leads directly to the identification of subjects in less than 10 percent of cases. See R. Hazelwood et al., “Criminal Investigative Analysis: An Overview,” in R. Hazelwood and A. Burgess (eds.), *Practical Aspects of Rape Investigation (2nd Edition)*, London: CRC Press, 1995, at 115–126; and Malcolm Gladwell, “Dangerous Minds: Criminal Profiling Made Easy,” *The New Yorker*, November 12, 2007, citing a study by the United Kingdom’s Home Office, which found that profiles only led to the arrest of the suspect in 2.7 percent of cases.

“Suspect profiles” or “suspect descriptions” use victim or witness reports to describe a particular person sought in connection with a particular crime. Personal appearance, which almost always includes ethnic characteristics, is a core aspect of a suspect profile. However, when police receive an overly general suspect description that features race, ethnicity, or similar characteristics, they should seek additional and more specific information before using the description to stop and search people.

Police, customs, or immigration officials may also use ethnicity and other personal factors when they have specific, concrete intelligence regarding future crimes involving a particular group of potential suspects at a specific location for a short, specified duration of time. It is not uncommon for criminal justice officials to create special, temporary task forces to address crime organizations with national or ethnic links. Immigration officers, customs and border guards also use profiles that include ethnicity and national origin in efforts to detect contraband and organized crime. As with vague suspect descriptions, the operational use of a concept as broad as that of an ethnic gang or nationality-based crime ring must be used with caution. Such profiles risk perpetuating harmful

stereotypes, and they may be self-defeating if they are not based on current intelligence, as criminals often adapt in response to enforcement practices in order to avoid detection.

3. Greg Ridgeway, *Analysis of Racial Disparities in the New York Police Department's Stop, Question, and Frisk Practices*, Santa Monica: Rand Corporation, 2006, at xiii, found that "Five officers appear to have stopped substantially more black suspects than other officers did when patrolling the same areas, at the same times, and with the same assignment."

4. "As with other systemic practices, racial profiling can be conscious or unconscious, intentional or unintentional. Racial profiling by police officers may be unconscious." *The Queen v. Campbell*, Court of Quebec, Criminal Division, no. 500-01-004657-042-001, Judgment of January 27, 2006, quoted in European Union Network of Independent Experts on Fundamental Rights, *Ethnic Profiling*, CFR-CDF.Opinion4.2006, at 7.

5. U.S. Department of Justice, Civil Rights Division, *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies*, Washington, D.C., June 2003, at http://www.usdoj.gov/crt/split/documents/guidance_on_race.htm.

6. Home Office, Police and Criminal Evidence Act (PACE) 1984 Code of Practice, 2008 version, paragraph 2.2.

7. European Commission against Racism and Intolerance (ECRI), *General policy recommendation No 11 on combating racism and racial discrimination in policing*, adopted on June 29, 2007, Strasbourg: ECRI/Council of Europe, 2007, 39, paragraph 1.

8. Olivier De Schutter and Julie Ringelheim, "Ethnic Profiling: A Rising Challenge for European Human Rights Law," *Modern Law Review* 71(3), 2008, 358-384.

9. European Union Agency for Fundamental Rights (FRA), *Towards More Effective Policing. Understanding and Preventing Discriminatory Ethnic Profiling: A Guide*, Vienna: FRA, 2010, at 15.

10. Recommendation CM/Rec(2010)13 of the Committee of Ministers to member states on the protection of individuals with regard to automatic processing of personal data in the context of profiling (Adopted by the Committee of Ministers on November 23, 2010 at the 1099th meeting of the Ministers' Deputies).

11. A recent report that compares the profiles of 58 "homegrown terrorists" to "radicals" who do not support terrorism and Muslims more generally draws attention to a number of additional elements as relevant to the appeal of terrorist activity rather than alternatives. "Five elements are often overlooked, but which suggest that a significant part of the phenomenon shares much in common with other extremist or youth movements: emotional 'pull' to act in the face of injustice; thrill, adventure and coolness; status and internal code of honour; peer pressure; the lack of alternative sources of information." Jamie Bartlett, Jonathan Birdwell, and Michael King. *The Edge of Violence; a radical approach to extremism*, London: Demos, 2010.

12. These parallels have been clearly articulated by the European Commission's Expert Group on Violent Radicalisation that included a group of Europe's foremost experts in the field who adopt a historical and comparative perspective spanning different types of terrorist violence. See European Commission's Expert Group on Violent Radicalisation, *Radicalisation Processes Leading to Acts of Terrorism*, Brussels: European Commission, May 15, 2008, at 5-11.

13. A report of MI5's behavioral science unit leaked to The Guardian, and described by Alan Travis, "MI5 Report Challenges Views on Terrorism in Britain," *The Guardian*, August 20, 2008.
14. Ministère de l'Intérieur, de l'Outre-mer et des Collectives Territoriales à Monsieur le Préfet de Police, Paris, le 5 Aout 2010. Références Circulaire IOC/K/1016329/J du 24 Juin 2010.
15. *R v. Immigration Officer at Prague Airport ex parte Roma Rights Centre and Others* ("Roma Rights"), United Kingdom HL 55, Judgment of September 17, 2004.
16. Phillip Atiba Goff, Liana Maris Epstein, Chief Chris Burbank, Division Chief Tracie L. Keesee, *Deputizing Discrimination? Causes & Effects of Cross-Deputization Policy in Salt Lake City, Utah*, The Consortium for Police Leadership in Equity, Board of Directors, forthcoming. Also, Nicole J. Henderson, Christopher W. Ortiz, Naomi F. Sugie, and Joel Miller, *Law Enforcement and Arab-American Community Relations After September 11; Engagement in a Time of Uncertainty*, New York: Vera Institute of Justice, June 2006; Deborah Ramirez et al., *Developing Partnerships Between Law Enforcement and American Muslim, Arab and Sikh Communities; A Promising Practices Guide*, New York and Boston: Open Society Institute and Northeastern University, 2004.
17. EU network of independent experts on fundamental rights, *Ethnic Profiling*, CFR–CDF. Opinion4. 2006, at 8.
18. United Nations Committee on the Elimination of Racial Discrimination (CERD), Concluding Observations—France (1994), at 125.
19. European Commission against Racism and Intolerance (ECRI), *General policy recommendation No 11 on combating racism and racial discrimination in policing*, at 5.
20. *Opinion of the European Union Agency for Fundamental Rights on the Council Framework Decision for a Passenger Name Record (PNR) data for law enforcement purposes*, Vienna: October 28, 2008, at 39. In June 2011 the FRA issued a new opinion on the EU's proposal for a Directive on the use of passenger name record information to fight terrorism and serious organized crime in which it finds that risks of direct and indirect discrimination have been reduced through new language in the revised text of the proposed directive. FRA Opinion 1/2011, Passenger Name Record.
21. Article 1 of the International Covenant on the Elimination of Racial Discrimination defines "racial discrimination" to include relevant distinctions based on "race, colour, descent or national or ethnic origin." International human rights law also explicitly prohibits religious discrimination. See, Articles. 2(1) and 26 of the International Covenant on Civil and Political Rights, and related jurisprudence of the UN Human Rights Committee addressing religious discrimination. Moreover, the CERD has repeatedly reminded states not to discriminate on the basis of race, ethnicity, or religion.
22. "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ... race, colour ... religion ... national or social origin, association with a national minority ... or other status." Art. 14 of the European Convention on Human Rights.
23. *Belgian Linguistics Case* (No. 2), 1 Eur. Ct. Hum. Rts. 252, paragraph 10 (1968) establishes the following test of discrimination:

"[T]he principle of equality of treatment is violated if the distinction has no objective and reasonable justification. The existence of such a justification must be assessed

in relation to the aim and effects of the measure under consideration, regard being had to the principles which normally prevail in democratic societies. A difference of treatment in the exercise of a right laid down in the Convention must not only pursue a legitimate aim: Article 14 is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised.”

24. In *Timishev v. Russia*, Eur. Ct. Hum. Rts. application nos. 5576/00 and 55974/00, the court found a violation of the European Conventions Article 14 taken in conjunction with Article 2 of Protocol no. 4. *Timishev v. Russia*, at 59.

25. The committee specifically found Spain to be in violation of article 26, read in conjunction with article 2(3).

26. United Nations Human Rights Committee, 96th session, July 13–31, 2009, Communication 1493/2006, at 7.2.

27. Belgian Linguistics Case (No. 2), 1 Eur. Ct. Hum. Rts. 252, at 10 (1968). The Eur. Ct. Hum. Rts. has also set out another test for discrimination in cases where equality requires that persons differently situated be treated in a different manner (see judgment of *Thlimmenos v. Greece* [GC], no. 34369/97, at 44, Eur. Ct. Hum. Rts. 2000-IV).

28. Eur. Ct. Hum. Rts., *Gillan and Quinton v. the United Kingdom*, Application no. 4158/05, judgment of January 12, 2010, at 87.

29. *Gillan and Quinton v. the United Kingdom*, at 85.

30. *Gillan and Quinton v. the United Kingdom*, at 85.

31. Commission Recommendation of 06/XI/2006 establishing a common “Practical Handbook for Border Guards (Schengen Handbook)” at 1.2.

32. CERD, General Recommendation No. 30 (Non-Citizens), at 6. CERD has also urged states to “take the necessary steps to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person’s colour or features or membership of a racial or ethnic group, or any profiling which exposes him or her to greater suspicion.” CERD, General Recommendation No. 31 (Administration of the Criminal Justice System), at 20.

33. ECRI’s General Policy Recommendation No. 8 on combating racism while fighting terrorism, adopted March 17, 2004.

34. R.T. Shuford, “Civil Rights in the Next Millennium: Any way you slice it: Why Racial Profiling is Wrong,” *St. Louis University Public Law Review* 18 (1999): 371–385, 373.

35. American Psychiatric Association (APA), August 9, 2001, letter to the U.S. House of Representatives in support of the End Racial Profiling Act; available at <http://www.apa.org/ppo/issues/pracialprof.html>.

36. Focus groups conducted in 2005 in Madrid, Spain, by GEA21 for research published in Open Society Justice Initiative, *I Can Stop and Search Whoever I Want; Ethnic Profiling by Police in Bulgaria, Hungary, and Spain*, New York and Budapest: Open Society Institute, 2006.

37. *Ibid.*

38. From the email text sent by Temoins Lyon to convene a protest rally, « Contrôles policiers au facies, ça suffit ! 23 mars à la Part-dieu, » March 23, 2007.
39. Bernard Harcourt, "Rethinking Racial Profiling: A Critique of the Economics, Civil Liberties, and Constitutional Literature, and of Criminal Profiling More Generally," *The University of Chicago Law Review*, Vol. 71, No. 4, Fall 2004, at 1329–1330.
40. Michael Tonry (ed.), *Ethnicity, Crime and Immigration; Comparative and Cross-National Perspectives*, University of Chicago Press, 1996.
41. Lord Scarman, *The Brixton Disorders, 10–12 April 1981, Report of an Inquiry*, London: Home Office, 2001.
42. In the United States, riots in Los Angeles in 1992 followed the televised beating of a black motorist and the subsequent failure to convict the officers involved.
43. The victim was reportedly trying to prevent police from stopping and searching another person at the time he was assaulted by police. "Statsadvokaten undersøger Nørrebro-sag; Politidirektøren overgiver mulig sag om politivold, der knyttes til uroligheder på Nørrebro, til statsadvokaten," *Politiken*, February 19, 2008, at <http://politiken.dk/indland/article473454.ece>.
44. "Unge demonstrerer mod 'uroens årsag'; En gruppe unge vil demonstrere på Nørrebro imod visitationszonerne, som de ser som den direkte årsag til de seneste dages uroligheder," *Politiken*, February 15, 2008, at <http://politiken.dk/indland/article471982.ece> and at <http://nyhederne.tv2.dk/krimi/article.php/id-10544900.html>.
45. Ontario Human Rights Commission, *Inquiry Report, Paying the Price; The Human Cost of Racial Profiling*, Toronto: Ontario Human Rights Commission, undated document; the inquiry started in Feb. 2003.
46. In 2008–2009 stolen property was the reason given for 22 percent of stop and searches of white people, and 15 percent of stops and searches of black people. In the same period, searches for drugs were given as the basis for 50 percent of black people compared with 44 percent of white people. Ministry of Justice, *Statistics on Race and the Criminal Justice System 2008–2009*, London: Ministry of Justice, 2010.
47. Paul Quinton, Nick Bland, et al., *Police Stops, Decision-making and Practice*, London, Home Office, 2000, at 16–17.
48. In the United Kingdom, hit rates for stops and searches conducted under section 1 of the Police and Criminal Evidence (PACE) Act 1984, which requires reasonable suspicion to conduct a stop and search, ranged between 10 and 13 percent for the 2003–2009 period. Hit rates for public order stops and searches conducted under section 60 of the PACE Act 1984 ranged only between three and four percent for the same period. The hit rate for section 44 counter-terrorism stops and searches, which also does not require police officers to establish reasonable suspicion, ranged between 0.5 and 1.5 percent. Home Office, *Police Powers and Procedures England and Wales 2007/08*, London: Home Office, 2009, at 39; Ministry of Justice, *Statistics on Race and the Criminal Justice System 2008/9*, London: Ministry of Justice, 2010. In June 2010, the United Kingdom government suspended the use of section 44 stops and searches and amended the law based on the European Court of Human Rights' ruling in the case of *Gillan and Quinton v. United Kingdom*.

49. Studies have confirmed the negative impact ethnic profiling has on hit rates. A 1999 review of stop and frisk practices by the New York Police Department showed that although the Latino population of New York was about 22 percent, Latinos made up about 33 percent of all of those police stopped and frisked; the black population was approximately 24 percent, yet comprised about 52 percent of those stopped and frisked. By contrast, the city's white population (which constitutes 40 percent of the city's overall population) only made up about ten percent of all of those stopped and frisked. The data showed a hit rate of 12.6 percent for whites, 11.5 percent for Latinos and 10.5 percent for blacks. Profiling correlated directly to reduced efficiency of stops. Eliot Spitzer, Attorney General of the State of New York, *The New York City Police Department's 'Stop and Frisk' Practices: A Report to the People of the State of New York*, New York, December 1, 1999.

50. This figure was somewhat inflated by the inclusion of items such as penknives. E.J. van der Torre and H.B. Ferwerda, "Preventief fouilleren, Een analyse van het proces en de externe effecten in tien gemeenten" (Preventive searching, an analysis of the process and the external effects in ten municipalities *Politie & Wetenschap*, 2005). Data are available from 187 preventive search operations conducted from 2002 to 2004 in the cities of Amsterdam, Maastricht, Haarlemmermeer, Den Helder, Rotterdam, Heerlen, Utrecht, and Tilburg. Data include information on the cost of the policy in terms of man-hours, and on police conduct. During these operations, 79,499 persons were searched and 2,010 weapons (as defined by the Weapons and Ammunition Act) were found: 68 percent stabbing weapons; 16.8 percent were striking weapons and 2.6 percent were firearms (52 units); 12.6 percent fall into a category of "other." The study involving all 10 cities suggests that creative accounting took place on a modest scale to increase the seeming effectiveness of the results. Thus hobby knives (fishing knives), for example, were also counted.

51. Ibid. During 54 preventive search operations in Amsterdam from November 2002 to March 2004, police searched 32,332 individuals and detected 702 weapons, only 15 of which were firearms. The operation cost 11,687 officer hours. Results in Rotterdam were similar: in 50 operations totaling 9,124 officer hours, 18,687 searches were carried out that detected 578 weapons, 23 of which were firearms.

52. Joel Miller, Nick Bland and Paul Quinton, "The Impact of Stops and Searches on Crime and the Community," *Police Research Series Paper 127*, London: Home Office, 2000; Ronald Weitzer and Steven A. Tuch, "Determinants of Public Satisfaction with the Police," in *Police Quarterly* No. 8(3) 2005: 279–297; Joel Miller, Robert C. Davis, Nicole J. Henderson, John Markovic and Christopher W. Ortiz, "Public Opinions of the Police: The Influence of Friends, Family, and Media," *National Institute of Justice Technical Report (2001-IJ-CX-0038)*; Dennis P. Rosenbaum, Amie M. Schuck, Sandra K. Costello, Darnell F. Hawkins, and Marianne K. Ring, "Attitudes toward the police: The effects of direct and vicarious experience," *Police Quarterly* No. 8(3), 2005, 343–365.

53. John D. McCluskey, Stephen D. Mastrofski, and Roger B. Parks, "To acquiesce or rebel: Predicting citizen compliance with police requests," *Police Quarterly* No. 2, 389–416.

54. Rod Morgan and Tim Newburn, *The Future of Policing*, Oxford: Clarendon Press/Oxford University Press, 1997.

55. Ibid.

56. C. Stone and H. Ward, "Democratic Policing; A Framework for Action," *Policing and Society*, Vol. 10, No. 1, 11–45.

57. R. Davis and P. Mateu-Gelabert, *Respectful and Effective Policing: Two Examples in the South Bronx*, New York: Vera Institute, March 1999.
58. *Ethnic Profiling*, CRF–CDF.Opinion4-2006, at 6.
59. *Allgemeines Gleichbehandlungsgesetz {General Equal Treatment Act} of 14 August 2006*, cited in *Ethnic Profiling*, CRF–CDF.Opinion4-2006, at 33.
60. Article 8 Racial Equality directive; ECRI General Policy Recommendation No. 7 on *National legislation to combat racism and racial discrimination* at 11 and Explanatory report at 29.
61. In “testing” methods, practices reported as discriminatory are put to the test through the deliberate effort by minority applicants to access the good or service in question and establish whether they are treated equally with majority applicants—in applying for employment or housing for example—and documenting the results for presentation as evidence in litigation. The Prague Airport case discussed in Annex A to this Handbook used testing to establish that UK border agents were discriminating against Czech citizens of Roma origin in immigration decisions.
62. Equality Act 2010. Available at: http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf. The Equalities Act 2010 is law in England, Scotland, and Wales. Northern Ireland is covered by separate legislation outlined below.
63. Paragraph 17(4)(a) of Schedule 3 to the Equality Act 2010.
64. S. 75(1) and s. 75(2) Statutory duty on public authorities.
65. Article 41.
66. Article 20A(3).
67. Article 20C(1).
68. Commission Nationale pour la Déontologie de la Sécurité (CNDS), Saisine no. 2009-77. Translation by the Open Society Justice Initiative.
69. Preamble, paragraph J.
70. Justice Initiative interview; name withheld on request.
71. Paragraph 5(1), “Guidelines Regulation” (BGBl 1993/266 idGF).
72. Ministry of Justice, *Statistics on Race and the Criminal Justice System—2006/7*, London: Ministry of Justice, 2008, at 24 and 32.
73. Council of Europe, Code of Police Ethics, adopted by the Council of Ministers on 19 September 2001, <http://cm.coe.int/ta/rec/2001/2001r10.htm>, Article 47.
74. *Gusinski v. Russia*, App. No. 70276/01, Eur. Ct. Hum. Rts., Judgment of May 29, 2004, para. 53. The United States Supreme Court established in *Terry v. Ohio* that reasonable suspicion is more than an “inchoate and unparticularized suspicion or ‘hunch’ but must be based on specific and articulable facts taken together with rational inferences from those facts.” Those factors must relate to a person’s behavior. The US Supreme Court has found it unconstitutional to stop and frisk a person simply because they are in a high-crime area (although “high-crime area” may be cited as a contributing factor).
75. European Commission, EU Network of Independent experts in fundamental rights, *Ethnic Profiling*, CFR–CDF.Opinion4, 2006.

76. In *Gillan and Quinton v. United Kingdom*, Application No. 4158/05, ECtHR 28, 12 January 2010, the European Court of Human Rights ruled on British stop-and-search powers under section 44 of the Counter-Terrorism Act. Section 44 was applied through an authorization procedure for set time periods in set locations; however, the power was granted to authorities for most of London for many years. Officers could stop people with no grounds for reasonable suspicion under section 44. The court considered that “the powers of authorization and confirmation as well as those of stop and search under sections 44 and 45 of the 2000 Act are neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse.” While only ruling on a violation of privacy rights, the court also flagged “the clear risk of arbitrariness in the grant of such a broad discretion to the police officer,” at 87.

77. Open Society Justice Initiative, *Addressing Ethnic Profiling by the Police: A Report on the Strategies for Effective Police Stop and Search (STEPSS) Project*, New York and Budapest: OSI, 2008.

78. Jeffrey Fagan, *Expert Report in the case of Floyd et al. v. City of New York*, United States District Court, Southern District of New York, 08 CIV 01034 (SAS), available at http://ccrjustice.org/files/Expert_Report_JeffreyFagan.pdf.

79. Paul Quinton, Nick Bland, et al. *Police Stops, Decision-Making and Practice*, London: Home Office, 2000.

80. Human Rights Watch, *Without Suspicion: Stop and search under the Terrorism Act 2000*, New York: Human Rights Watch, 2010.

81. The Police and Criminal Evidence Act 1984 Code of Practice has been revised several times; the latest version came into effect on the on March 7, 2011. This includes PACE 1984 (section 1), the Misuse of Drugs Act 1971 (section 23), the Firearms Act 1968 (section 47), the Terrorism Act 2000 (sections 43 and 44) and section 60 of the Criminal Justice and Public Order Act 1994. It can be found at: <http://www.homeoffice.gov.United Kingdom/publications/police/operational-policing/pace-codes/pace-code-a-2011?view=Binary>.

82. At 2.2.

83. The 2005 version of the Code of Practice introduced the reporting of “stops” as well as stop and searches. Stops or stop and accounts are defined as stops where officers ask an individual to account for their actions or presence in an area but do not go on to search that person. The 2011 version of the code places the decision on whether stops or stop and accounts be recorded in the hands of individual police forces.

84. Equality and Human Rights Commission (2012) “Race disproportionality in stops and searches under Section 60 of the Criminal Justice and Public Order Act 1994, Briefing paper 5,” London: EHRC, p. 24.

85. Paul Quinton, Nick Bland, et al., *Police Stops, Decision-making and Practice*, London: Home Office, 2000.

86. Home Office, Code of Practice (England, Wales and Scotland) for the Authorisation and Exercise of Stop and Search Powers Relating to Section 47A of Schedule 6B to the Terrorism Act 2000, March 18, 2011, <http://www.homeoffice.gov.United Kingdom/publications/counter-terrorism/terrorism-act-remedial-order/code-of-practice?view=Binary>.

87. The Terrorism Act 2000 can be found at: http://www.opsi.gov.United Kingdom/Acts/acts2000/pdf/United Kingdompga_20000011_en.pdf.

88. *Gillan and Quinton v. United Kingdom*, Application No. 4158/05, Eur. Ct. Hum. Rts. 28, January 12, 2010.
89. Home Office, Code of Practice (England, Wales and Scotland) for the Authorisation and Exercise of Stop and Search Powers Relating to Section 47A of Schedule 6B to the Terrorism Act 2000 March 18, 2011, <http://www.homeoffice.gov/United Kingdom/publications/counter-terrorism/terrorism-act-remedial-order/code-of-practice?view=Binary>, para. 3.1.1.
90. Human Rights Joint Committee, *Fourteenth Report, Terrorism Act 2000 (Remedial) Order 2011: Stop and Search without Reasonable Suspicion*, <http://www.parliament.United Kingdom/business/committees/committees-a-z/joint-select/human-rights-committee/news/fourteenth-report/>.
91. Schedule 7 of the Terrorism Act 2000. Available at: http://www.opsi.gov.United Kingdom/acts/acts2000/United Kingdompga_20000011_en_1.
92. Home Office, *Examination Officers under the Terrorism Act 2000—Code of Practice*, London: Home Office, 2009.
93. National Policing Improvement Agency, *Practice Advice on Schedule 7 of the Terrorism Act 2000*, London: NPIA, 2009. Available at: http://www.npia.police.United Kingdom/en/docs/Schedule_7_of_the_Terrorism_Act_2000.pdf.
94. Council Directive 2000/43/EC of June 29, 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
95. Council Directive 2000/43/EC.
96. Recital (13), Directive 2000/43.
97. *Kuric v. Slovenia*, Judgment of 26 June 2012 (Grand Chamber), para. 355.
98. *Gaygusuz v Austria*, 23 EHRR 365, para. 42 (1996).
99. *Regina v. Immigration Officer at Prague Airport*, [2004] United Kingdom HL 55, at <http://www.publications.parliament.United Kingdom/pa/ld200405/ldjudgmt/jdo41209/roma-4.htm>.
100. Passenger Name Record data include: a) known travel agency; b) short visits to risk country; c) unusual routing; d) cash paid ticket; e) recent passport (less than a month before departure); f) voyage out (alone), voyage home (not alone); g) less than 10 day return ticket; h) voyage out and home with different tickets; i) judicial information in Belgium or abroad. Interview with officials of Brussels airport police, October 2008.
101. Case study based on interview conducted with Customs officers on August 16, 2008.
102. The independent review recommended that all searches of persons require “independent higher officer authorization.” This has significantly reduced the number of searches carried out, but has not reduced disproportionality—Afro-Caribbeans are still searched in disproportionate numbers. Customs may remove the requirement for approval by an “independent higher officer” as it is not always practical in smaller ports.
103. *Rosalind Williams*, Spanish Constitutional Court Decision No. 13/2001, January 29, 2001 (STC 13/2001). See Annex A.
104. Utlänningslag (2005: 716).
105. Ordonnance No. 45–2658, du 2 Novembre 1945, Article 8.

106. Code de Procedure Pénale, Article 78.1.
107. GISTI, *Le contrôle d'identité des étrangers*, Paris: GISTI, 2003, at 5.
108. Conseil Constitutionnel, Décision du Conseil constitutionnel no. 93-325 du 13 août 1993.
109. Conseil Constitutionnel, Décision du Conseil constitutionnel no. 93-323 du 13 août 1993.
110. Phillip Atiba Goff; Liana Maris Epstein; Chief Chris Burbank; Division Chief Tracie L. Kee-see, Ph.D., *Deputizing Discrimination? Causes & Effects of Cross-Deputization Policy in Salt Lake City, Utah*, The Consortium for Police Leadership in Equity, Board of Directors, forthcoming. Also, Nicole J. Henderson, Christopher W. Ortiz, Naomi F. Sugie, and Joel Miller, *Law Enforcement and Arab-American Community Relations After September 11; Engagement in a Time of Uncertainty*, New York: Vera Institute of Justice, June 2006; Deborah Ramirez et al., *Developing Partnerships Between Law Enforcement and American Muslim, Arab and Sikh Communities; A Promising Practices Guide*, New York and Boston: OSI and North Eastern University, 2004.
111. National Action Plan Against Racism (NPAR) at 41.
112. In the case of *Bekor and Koutropoulos v. Greece*, two Greek citizens of Roma ethnicity charged that abuse suffered at hands of police during arrest and in detention was racially motivated. The court found that the evidence did not adequately demonstrate racist intent and did not rule on the Article 14 claim. However, the court considered that, when investigating violent incidents, state authorities had the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice might have played a role in the events. Admittedly, proving racial motivation would often be extremely difficult in practice. The authorities had to do what was reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully-reasoned, impartial and objective decisions, without omitting suspicious facts that might indicate racist motives. ECtHR, 15250/02.
113. Samuel Walker, *The New World of Police Accountability*. Thousand Oaks: Sage Publications, 2005.
114. Hans Born and Marina Caparini, *Democratic Control of Intelligence Services*, Geneva: DCAF, 2007. Hans Born and Ian Leigh, *Democratic Accountability of Intelligence Services*, Geneva: DCAF Policy Paper 19, 2007.
115. Independent Police Complaints Commission (IPCC), *IPCC position regarding police powers to stop and search*, London: IPCC, 2009. Available at: http://www.ipcc.gov.UK/stop_and_search_policy_position.pdf.
116. Report on internal and external discrimination by police services: analysis of complaints for the year 2004 relating to racism. Available in French at: <http://www.comitep.be/fr/fr.html> (publications 2005).
117. 112 Commission Nationale de Déontologie de la Sécurité (CNDS), *Rapport annuel 2004*, Paris : CNDS, at 496; translation by the authors.
118. 113 CNDS, *Rapport annuel 2004*, at 503.
119. Garda Síochana Act 2005, section 106.
120. GSOC statistics show that 83 percent of complaints received by December 31, 2009 were from Irish nationals and 17 percent from non-nationals (who represent 10 percent of the population of

Ireland). Of the total number of complainants, three percent were British, two percent Polish, one percent Lithuanian, two percent Nigerian, four percent “other European,” two percent other African, two percent “other,” and one percent not known. Within the Irish national caseload, four percent of complaints were received from Travellers, five percent from blacks, and 88 percent from whites.

121. These examinations can only be carried out at the request of the Minister of Justice. In principle, the minister should grant the ombudsman’s requests for such examinations and request the ombudsman to carry out these examinations when he sees fit. However, practice to date indicates that this is not necessarily the case. “In July 2007, GSOC wrote to the Minister concerning a possible examination under section 106 of the management of incidents of crowd protest or civil disobedience by groups or persons. The Minister, following discussions with GSOC, did not feel that it was appropriate at that time for him to request such an examination.” Garda Síochána Ombudsman Commission (GSOC), *Second Annual Report 2007*. GSOC reports are available at www.gardaombudsman.ie.

122. Equality Monitoring Report 2000–2007.

123. Katy Radford, Jennifer Betts and Malcolm Ostmeyer, *Police, Accountability and the Black and Minority Ethnic Communities in Northern Ireland*, Belfast: Institute for Conflict Research, February 2006, <http://www.nipolicingboard.org.United Kingdom/minority1-2.pdf>.

124. The Netherlands National Ombudsman, Reports 2006/230 and 2007/001.

125. Here the complainant perceived a question about the reason for her stay as motivated by racism. The minister responded that “it cannot be concluded from the subjective observation of a single person [the complainant] that a KMar officer’s actions were motivated by racism, since these observations can be explained in various ways.” The ombudsman noted that “The petitioner’s perception that the question was prompted by racist motives is indeed subjective. However, this perception was caused by the fact that nobody explained to her why the question was asked. This was also omitted in the complaints procedure [internal to KMar] and undermines the argument that the close questioning was in no way based on discrimination. The Minister should either have given a good reason why the petitioner was asked the question or should have recognised that the petitioner’s argument could not be refuted and subsequently drawn a conclusion. The complaints procedure failed to produce reasoned arguments. The investigated behaviour was not appropriate.” The Netherlands National Ombudsman, Report 2008/059, at 33; see also above at Section 1, d.

126. Report no. 2009/170.

127. Report 2007/080.

128. Northern Ireland Human Rights Commission, “Our Hidden Borders” (Belfast 2009) Available at: <http://www.statewatch.org/news/2009/apr/Our%20Hidden%20Borders%20April%202009.pdf>.

129. Equalities and Human Rights Commission (EHRC) “Stop and Think: A Critical Review of the Use of Stop and Search Powers in England and Wales,” London, 2010. Available at http://www.equalityhumanrights.com/uploaded_files/raceinbritain/ehrc_stop_and_search_report.pdf.

130. EHRC, “Commission and police forces sign agreement on stop and search,” May 10, 2011. Press release available at: <http://www.equalityhumanrights.com/news/2011/may/commission-and-police-forces-sign-agreement-on-stop-and-search/>.

131. The Danish Institute of Human Rights, *Ethnic Profiling in Denmark—Legal Safeguards within the Field of the Work of the Police*, Copenhagen: DIHR, 2011.

132. At: <http://www.mpa.gov.United Kingdom/downloads/issues/stop-search/stop-search-report-2004.pdf>.

133. In the United Kingdom context, “Stop and account” refers to police officers stopping members of the public and asking them to account for their actions or presence in an area. It is not a statutory power, but has been recorded since 2005 following public concerns about disproportionality in its use.

134. Northern Ireland Policing Board, *Human Rights Thematic Review—Children and Young People*, Belfast: NIPB, 2011, at: http://www.nipolicingboard.org.United Kingdom/human_rights_thematic_enquiry_children_young_people_final_pdf.pdf and Northern Ireland Policing Board, *Human Rights Thematic Review—Stop and Search*, Belfast: NIPB, March 2011.

135. Hans Born and Ian Leigh, *Democratic Accountability of Intelligence Services*, Centre for Security Development and the Rule of Law, Geneva: DCAF, 2007.

136. House of Commons Communities and Local Government Committee, *Preventing Violent Extremism*, Sixth Report of Session 2009–2010, at 74–75.

137. For example, when ECRI recommended that France collect statistics broken down by ethnicity, French authorities termed the suggestion “inconceivable.” European Commission Against Racism and Intolerance, *Third Report on France*, Strasbourg: ECRI, 2004, at appendix. European standards also clearly recognize the need for and value of statistical data in the criminal justice and law enforcement realm. The Council of Europe’s Committee of Ministers has made clear that it is “[a]ware of the needs in both the public and private sectors for reliable statistics for analysis and understanding of contemporary society, and for defining policies.” Preamble, Recommendation no. R (97) 18 of the Committee of Ministers concerning the Protection of Personal Data Collected and Processed for Statistical Purposes. Recommendation R(97)18 of the Committee of Ministers explicitly permits the processing of sensitive data including “personal data revealing racial origin” where domestic law provides that data must be “collected in such a way that the data subject is not identifiable.” Similar provisions exist in the European Council Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters: Article 3 notes the possibility of processing personal data for “historical, statistical or scientific purposes, provided that Member States provide appropriate safeguards, such as making the data anonymous.”

138. The European Union Directive on the protection of individuals with regard to the processing of personal data (Directive 95/46/EC “on the protection of individuals with regard to the processing of personal data and on the free movement of such data,” October 24, 1995) and on the free movement of such data expressly exempts from its application anonymous statistical information of the kind needed to document and prove racial discrimination. The Directive’s “principles of protection” apply only to “personal data”—“information relating to an identified or identifiable natural person” (art. 2(a)); and such principles “shall not apply to data rendered anonymous in such a way that the data subject is no longer identifiable,” (Recital 26). Moreover, processing even of “personal data revealing racial or ethnic origin” is permissible where, among other things, it “(b) is necessary [to satisfy] obligations ... of the controller in the field of employment law,” or it “(e) relates to data which are ... necessary for the establishment, exercise or defence of legal claims,” (Art. 8).

139. For example, European Commission Against Racism and Intolerance, *Third Report Germany*, Strasbourg: ECRI, 2003, at 85; and the OSCE, *Recommendations on Policing in Multi-Ethnic Societies*. See also, Fundamental Rights Agency, *Toward More Effective Policing. Understanding and Preventing Discriminatory Ethnic Profiling: A Guide*, Vienna: FRA, 2010, at 25.

140. Article 42.

141. The basic principles of data protection in the police sector are established in the Council of Europe's Recommendation 15 of 1987 on the use of personal data in the police sector. Further guidance is provided by the Council of Europe's Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (1981).

142. Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (1981) Article 6 on special categories of data.

143. Recommendation 15 (1987) stipulates that "Measures should be taken so that personal data kept for police purposes are deleted if they are no longer necessary for the purposes for which they were stored."

144. New York State Assembly law A.11177-A/S.7945-A.

145. Section 95 of the 1991 Criminal Justice Act.

146. In the United Kingdom, stop data are often compared against census data which gives the resident population of a given area at a point in time. As there can be long intervals between one census and another, census data may not provide an up-to-date representation of local resident populations. There are also circumstances in which census data on residents may not reflect the profile of people who are actually present in a particular place at a particular time. For example, the local census is unlikely to provide an accurate picture of persons driving on motorways or using public spaces. It also appears that the police conduct stops and searches in places and at times when large numbers of young people and ethnic minorities are present. The factors outlined above lay behind a pioneering observational study in the United Kingdom.

147. Nick Bland, Joel Miller, et al, *Upping the PACE? An evaluation of the recommendations of the Stephen Lawrence Inquiry on stops and searches*, London: Home Office, 2000.

148. Case study based on interviews conducted with the Merseyside Police in March 2011.

149. StopWatch, *StopWatch's response to the proposed changes to the Police and Criminal Evidence Act 1984 (PACE) Code of Practice A. Revisions proposed 20th September 2010*, London: October 2010. The Open Society Justice Initiative is a founding member of StopWatch. See www.stop-watch.org.

150. Case study based on interviews with the West Yorkshire Police in June 2010.

151. In Spain, nationality was used a proxy for ethnicity. Thus the term "Spanish" is used to indicate "white Spanish," while nationality is used to describe the ethnicity of other groups stopped. As few immigrants to Spain have nationalized, it is still possible to use nationality as an accurate proxy for ethnicity, but this but this hides those who have nationalized, ethnic minorities who are born in Spain, and Roma, and will cease to be a useful proxy over time.

152. See Open Society Justice Initiative, *Addressing Ethnic Profiling by the Police: A Report on the Strategies for Effective Police Stop and Search (STEPSS) Project*, New York: OSI, 2008. A STEPSS Resource Pack containing examples of forms, operational guidance and "know your rights" booklets is available on request from: info@justiceinitiative.org.

153. Paul Quinton, Nick Bland, et al. *Police Stops, Decision-Making and Practice*, London: Home Office, 2000.

154. The possibility of using data to target operations depends on the quality of the data and whether it simply reflects historically prejudiced patterns of policing.

155. E.J. van der Torre and H.B. Ferwerda, *Preventief fouilleren, Een analyse van het proces en de externe effecten in tien gemeenten* ("Preventive searching, an analysis of the process and the external effects in ten municipalities").

156. Ibid. During 54 preventive search operations in Amsterdam from November 2002 to March 2004, police searched 32,332 individuals and detected 702 weapons, only 15 of which were firearms. The operation cost 11,687 officer hours. Results in Rotterdam were similar: in 50 operations totaling 9,124 officer hours, 18,687 searches were carried out that detected 578 weapons, 23 of which were firearms.

157. During the STEPSS project, data collected on stops in Fuenlabrada allowed local police to talk with community members about how stops were being used. It was shown that the majority of stops over a two month period were being conducted in relation to a counter-terrorism operation. The operation was carried out in conjunction with the national police, as it was considered likely that there would be another bombing in Madrid due to the concurrence of two events: the trial of the March 11, 2006, bombing suspects and the hunger strike of the notable ETA member Inaki de Juana Chaos. The counter-terrorism related stops resulted in only one arrest and discussions in the monthly community meetings made clear the negative impact in the Moroccan community, resulting in the police cancelling the operation.

158. European Network Against Racism, *Racism in Europe: ENAR Shadow Report 2009–10*, Brussels: ENAR, 2011. Available at: <http://cms.horus.be/files/99935/MediaArchive/FINAL%20SR%20-%20online%20version%202.pdf>.

159. European Network Against Racism, "Supplemental Report: Ethnic Profiling in Belgium," *Shadow Report 2009/2010*, Brussels: ENAR, 2011. Available at: <http://cms.horus.be/files/99935/MediaArchive/20092010%20ENAR%20supplement%20Belgium.pdf>.

160. Andreas Hieronymus, European Network Against Racism, "Supplemental Report: Ethnic Profiling in Germany," *Shadow Report 2009/2010*, Brussels: ENAR, 2011. Available at: <http://cms.horus.be/files/99935/MediaArchive/ENAR%20Ethnic%20Profiling%20Supplement%20Germany.pdf>.

161. Laura di Pasquale, European Network Against Racism, "Supplemental Report: Ethnic Profiling in Italy," *Shadow Report 2009/2010*, Brussels: ENAR, 2011. Available at: <http://cms.horus.be/files/99935/MediaArchive/ENAR%20Ethnic%20Profiling%20Supplement%20Italy.pdf>.

162. See John Lambert, expert testimony, *Revised statistical analysis of the incidence of police stops and arrests of black drivers/travelers on the New Jersey Turnpike between intersection 1 and 3 from Years 1988 through 1991*, in the case of *State v. Soto*, 734 A.2d 350; N.J. Super Ct. Law Div. 1996.

163. Ranges established by John Lamberth, US statistician and expert on racial profiling. See www.lamberthconsulting.com. Also see: *New Jersey v. Soto*, 324 N.J. Super. 66, 69, 1996.

164. Open Society Justice Initiative, *Ethnic Profiling in the Moscow Metro*, New York: OSI, 2006.

165. Open Society Justice Initiative, *Police et Minorités visibles; les contrôles d'identité à Paris*, New York: OSI, 2009.
166. Home Office Police Research Series Papers 2000, at: <http://webarchive.nationalarchives.gov.uk/UnitedKingdom/20110220105210/http://rds.homeoffice.gov.uk/UnitedKingdom/rds/policerspubs1.html>.
167. P.A.J. Waddington, K. Stenson, et al., *Disproportionality on police stop and search in Reading and Slough*, Thames Valley Police, unpublished, 2002.
168. S. Hallsworth and M. McGuire, *Examining Stop and Search Patterns in the City of London*, London: The Centre for Social Evaluation Research, London Metropolitan University and the City of London Police, 2005.
169. A Submission from Lambeth Community-Police Consultative Group to the MPA Stop and Search Scrutiny, London: Lambeth Community-Police Consultation Group, 2005.
170. Robert Davis, *The Use of Citizen Surveys as a Tool for Police Reform*, New York: Vera Institute of Justice, July 2000.
171. European Fundamental Rights Agency, *EU-MIDIS Data in Focus 4: Police Stops and Minorities*, Vienna: FRA, November 10, 2010.
172. Mary Walker, 2007 *Traveller/Ethnic Minorities Communities' Attitudes to the Garda Síochána*, Garda Research Unit, Research Report No. 9/07.
173. Abigail Kramer, *News Brief: City Youth and the NYPD*, May 5, 2011, Available at: <http://www.news.school.edu/milano/nycaffairs/newsbriefs.aspx#NYPD>.
174. Home Office Police Research Series Papers 2000, 127–132, at: <http://rds.homeoffice.gov.uk/UnitedKingdom/rds/policerspubs1.html>.
175. Paul Quinton, Nick Bland, et al. *Police Stops, Decision-Making and Practice*, Home Office: London, 2000.
176. V. Stone and N. Pettigrew, *The Views of The Public on Stops and Searches*, Home Office: London, 2000.
177. Centre for the Study of Democracy, Bulgaria; Professor András L. Pap and TÁRKI, Hungary; GEA21, Spain, conducted with the Open Society Justice Initiative. Results on file at the Open Society Justice Initiative and comparative analysis available in *I Can Stop Whoever I Want: Ethnic Profiling in Bulgaria, Hungary and Spain*, New York, Open Society Institute, 2006.
178. Open Society Justice Initiative, *I Can Stop Whoever I Want: Ethnic Profiling in Bulgaria, Hungary and Spain*, New York, OSI, 2006.
179. Migrants Rights Centre Ireland, *Singled Out: Exploratory Study on Ethnic Profiling in Ireland and Its Impact on Migrant Workers and Their Families*, 2011. Available at: http://www.mrci.ie/media/130129931649_Singled_Out%20EMBARGO%2028%20MARCH.pdf.
180. *Ibid*, at 24.
181. Article, “Erklæring: Sandheden bag urolighederne” (Declaration: the truth behind the riots), published under the pseudonym “Boys from Inner Nørrebro,” *Politiken*, February 18, 2008.

182. Stop and search zones are established by the District Commissioners of the Police. The authorization must be established in writing stating a reason for the zone, the geographic area to be covered, and the duration of the zone. There is no time limit on how long the zones can be extended.

183. Between September 15, 2008 and January 15, 2010, 9,887 individuals were searched a total of 17,977 times in the stop and search zones. Among those searched were 120 nationalities, and only 697 women. One person was searched 31 times, and the oldest person searched was 81 years of age. Searches detected 1,064 violations of the law, including 309 weapons, from 18,000 total searches. At <http://politiken.dk/indland/ECE882398/18000-visitationer-gav-300-vaaben/>.

184. See: <http://politiken.dk/indland/ECE882398/18000-visitationer-gav-300-vaaben/>. The 20 percent includes white non-Danes such as Norwegians and Swedes. The actual number of visible minorities may be higher as Statistics Denmark only counts the descendants of immigrants when both parents have retained citizenship. See: <http://politiken.dk/indland/ECE883053/racismecenter-vil-undersoege-visitationer/>.

185. See: <http://www.cphpost.dk/news/crime/155-crime/46646-norrebro-riots.html>; <http://www.cphpost.dk/news/crime/155-crime/46662-random-searches-net-one-weapon.html>.

186. Number of searches increase with poor results: <http://sverigesradio.se/sida/gruppsida.aspx?programid=3182&grupp=9495&artikel=3413240>.

187. European Network of Independent Experts on Fundamental Rights, *Ethnic Profiling*, CRF-CDF.Opinion4-2006.

188. David Harris, *Profiles in Injustice; Why Racial Profiling Cannot Work*, New York, The New Press, 2002, and U.S. Customs Service, *Personal Searches of Air Passengers Results: Positive and Negative*, Fiscal Year 1998, U.S. Customs Service.

189. National Intelligence Model, at <http://police.homeoffice.gov.uk/publications/operational-policing/nim-introduction>; Association of Chief Police Officers, ACPO, 2005 *Guidance on the National Intelligence Model*, at <http://www.acpo.police.uk/asp/policies/Data/nim2005.pdf>.

190. R. Davis and P. Mateu-Gelabert, *Respectful and Effective Policing: Two Examples in the South Bronx*, New York: Vera Institute, March 1999.

191. See Open Society Justice Initiative, *Addressing Ethnic Profiling by the Police: A Report on the Strategies for Effective Police Stop and Search (STEPSS) Project*, New York: OSI, 2009.

192. Police And Criminal Evidence Act 1984, Code of Practice A 2011: at 5.1.

193. Case study based on visit to the Hertfordshire Constabulary in April 2008 and interview in September 2010.

194. Ministry of Justice, *Statistics on Race and the Criminal Justice System—2006/7*, London: Ministry of Justice, 2008.

195. Case study based on interviews in April 2008, September 2010, and May 2011.

196. At the time of writing, the MPS was reviewing stop and search practices but had not announced the results of the review or actions to be taken.

197. These can be found at: <http://www.mpa.gov.United Kingdom/downloads/issues/stop-search/english07.pdf>.
198. www.mpa.gov.United Kingdom/issues/stop-search/go-wisely.htm.
199. Information available at: http://www.streathamguardian.co.UnitedKingdom/news/8185732.Mobile_phone_app_to_diffuse_stop_and_search_tension/.
200. The principle of non-refoulement is enshrined in international refugee law. The 1951 Refugee Convention states that “no refugee should be returned to any country where he or she is likely to face persecution or torture.”
201. Most asylum requests are made from the Roissy airport. In 2006 about 96 percent of asylum requests made at French borders were made at this airport, <http://www.anafe.org/index.php>.
202. Association nationale d’assistance aux frontières pour les étrangers / ANAFE, *Une France inaccessible: Rapport de visites en aéroports zone d’attente de Roissy-Charles de Gaulle*, Paris : ANAFE, December 2007.
203. 1990 Trust, *Stop and Search: The Views and Experiences of Black Communities on Complaining to the Police*, London: Metropolitan Police Authority, 2004. S. Havis and D. Best, *Stop and Search Complaints (2000–2001)*, London: Police Complaints Authority, 2004.
204. R.C. McCorkle, A.B. 500 *Traffic Stop Data Collection Study—A summary of Findings*, Las Vegas: Office of the Attorney General of the State of Nevada, 2003.
205. Police and Criminal Evidence Act 1984 (PACE) 2011 version.
206. Case study based on visit to the Hertfordshire Constabulary in April 2008 and interview in September 2010, and Suffolk Constabulary in May 2011.
207. Erlass des BMI, Generaldirektion für die öffentliche Sicherheit vom 07.08.2002, GZ 19.038/237-GD/01, betreffend Sprachgebrauch in der Exekutive.
208. Assessing the impact of training requires that the specific skills imparted and impacts that they should have on behaviors be clearly identified and tracked through performance measures that capture these elements. Changes in the performance indicators can only be assessed when they can be compared to the prior data tracking the same indicators, which is not always available. In practice, assessing training can be complex and costly, and results often beg questions as to whether a causal relation can be drawn with any confidence between the training and the observed change.
209. F. Dobbin, A. Kalev, and E. Kelly, “Best Practices or Best Guesses? Diversity Management and Remediation of Inequality,” *American Sociological Review* 71, 2006, at 589–617.
210. F. Dobbin, A. Kalev, and E. Kelly, *Best Practices or Best Guesses?*
211. The Rotterdam Charter (Rotterdam, October 1997) also provides key principles on the training of police officers. Available at <http://www.rotterdamcharter.nl/read/2465>.
212. Open Society Justice Initiative, *Addressing Ethnic Profiling by the Police: A Report on the Strategies for Effective Police Stop and Search (STEPSS) Project*, New York: OSI, 2009.
213. Justice Initiative interview with Paul Gademan, Project Coordinator, Diversity Unit, Amsterdam police, May 5, 2008. Updated with Ingrid Bakker, Amsterdam Police, September 12, 2008.
214. See <http://www.secondwave.org.United Kingdom/>.

215. See <http://www.notanotherdrop.com/NAD/Welcome.html>.
216. Case study based on interviews conducted in September 2008.
217. ACPO National Communities Tension Team, Community Bulletin September 2007. Hampshire Police Authority, Community Affairs Committee, Exercise Nicole Feedback, November 4, 2008, http://www.hampshirepoliceauthority.org/item_8_-_exercise_nicole_feedback.doc.
218. Case study based on interviews conducted in September 2008 and May 2011.
219. Justice Initiative interview with Colin Melis, Amsterdam Information House, December 2008; Justice Initiative interview with Pieter Jan van Slooten, Amsterdam Information House, August 2009 and June 1, 2010.
220. Youssif Meah and Collin Mellis, *Recognising and Responding to Radicalisation: Considerations for Policy and Practice Through the Eyes of Street Level Workers*, EU Record project, at 30–31.
221. Justice Initiative interview with two Expert Advisors on Islam, Belgian Federal Police, May 10, 2010.
222. S.W. Macpherson, *The Stephen Lawrence Inquiry*, London: The Stationary Office CM 4262-I, 1999.
223. For other examples of policy audits aimed at addressing police discrimination please see: the London Metropolitan Police Service introduced Operation Pennant, above at Section 4, b. The Open Society Justice Initiative's STEPSS project included a policy audit of existing legislation, policy, practice and training with regards to the use of police powers to check IDs, and conduct stop and search in Bulgaria, Hungary, and Spain. See Open Society Justice Initiative, *Addressing Ethnic Profiling by the Police: A Report on the Strategies for Effective Police Stop and Search (STEPSS) Project*, New York and Budapest: OSI, 2008.
224. See <http://www.europeandialogue.org>.
225. A basic description of the Practice Orientated Package and force questionnaire can be found at: [http://police.homeoffice.gov.United Kingdom/publications/operational-policing/PACE-SSAT-POP.pdf?view=Binary](http://police.homeoffice.gov.United%20Kingdom/publications/operational-policing/PACE-SSAT-POP.pdf?view=Binary). Also see [http://police.homeoffice.gov.United Kingdom/news-and publications/publication/operational-policing/PACE-SSAT-POP.pdf](http://police.homeoffice.gov.United%20Kingdom/news-and-publications/publication/operational-policing/PACE-SSAT-POP.pdf).
226. New research in the United States indicates that workforce diversity in American police departments has an impact on racial profiling only when black and Latino officers reach the top ranks in the department. A diverse workforce with officers of color concentrated at the level of sergeant and below has no impact in reducing racial profiling. Findings presented by Philip Atiba Goff of the Consortium for Police Leadership in Equity (CPLI) at a roundtable in New York, October 26 and 27, 2010. Paper forthcoming following peer review.
227. According to the Dutch Office of Statistics, on January 1, 2007 there were 1,601,194 first generation migrants and 1,569,212 second generation migrants. The Netherlands has a total population of 16,357,992. In ENAR Shadow Report 2007, "Racism in the Netherlands," at 7, available at: <http://cms.horus.be/files/99935/MediaArchive/pdf/en/Netherlands%20-%20SR%202007.pdf>.
228. Justice Initiative interviews with Belgium minority police officers, October 2008.
229. Justice Initiative interviews with Dutch police working in the field of diversity and minority police officers, May 2008.

230. More information can be found at: <http://www.nbpa.co.uk/home/index.php/en/>.
231. More information can be found at: http://www.met.police.uk/links/muslim_police.htm.
232. Justice Initiative interviews with Gardai, Bray, Ireland, June 2008.
233. Justice Initiative with Commissaire de Police Theo Van Gasse, October 2008.
234. Language from the Law: The Cardiff E.S.O.L. Police Project, information available at: http://citiesofmigration.ca/good_idea/language-from-the-law-the-cardiff-esol-english-for-speakers-of-other-language-police-project/; and http://glanhafren.ac.uk/About_us/news_and_events/?n_id=306&type=news&ref=news_archive&year=2011&month=04.
235. Case study based on interview in June 2008.
236. PACE Code of Practice A.
237. The membership of the MSF includes leading community-based British Muslim organizations, and through its affiliated network of members it communicates with hundreds of Islamic organizations both nationally and locally.
238. Sue Adamson and Bankole Cole, *Evaluation of the West Yorkshire Police Community Scrutiny Panels (Stop and Search) Final Report*, University of Hull, 2007.
239. Ipswich and Suffolk Council for Racial Equality, *Stop and Search in Ipswich*, Suffolk: ISCRE, 2008. Available at: http://www.wmsadmin.co.uk/iscre/system/filelibrary/Criminal%20Justice_11/StopSearchIpswich.pdf.
240. Justice Initiative attendance at a meeting of the North Central Divisional Forum June 11, 2008; interview with Inspector Mary Gormley, June 2008 and numerous representatives of non-governmental organizations, June 2008.
241. Case study based on visit in June 2008.
242. K. Derfoufi, "Schedule 7—The Need for Greater Accountability," in K. Sveinsson (ed.), *Ethnic Profiling: The Use of "Race" in United Kingdom Law Enforcement*, London: Runnymede Trust, 2010. Recent data on the numbers and outcomes of Schedule 7 were obtained through a Freedom of Information request. Please see: Vikram Dodd, "Asian people 42 times more likely to be held under terror law," *The Guardian*, May 23, 2011.
243. Case study based on interviews in June 2008 and September 2010.
244. Case study based on interviews in June 2008.
245. See Strathclyde Police: <http://www.strathclyde.police.uk/index.asp?docID=4189>.
246. Web address: www.faircop.org, Twitter feed: @fair_cop.
247. Justice Initiative interviews with Travellers, June 2008; Caroline Keane, Pavee Point Travellers' Centre, June 2008; Finglas Gardai, June 2008.
248. The MCU operates under the Counter-Terrorism Command of the London MPS. The unit has eight counter-terrorism police officers, including Muslims and non-Muslims.

249. Robert Lambert, “Empowering Salafis and Islamists Against Al Qaeda: A London Counterterrorism Case Study,” *PSOnline*, January 2008, at 32, at www.apsanet.org.
250. 660 UNTS 195, entered into force January 4, 1969.
251. Article 14 of the ECHR provides: “The enjoyment of the rights and freedoms set forth in [the] 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.” European Convention for the Protection of Human Rights and Fundamental Freedoms, article 14, E.T.S. 5, entered into force September 3, 1953, as amended by Protocols Nos. 3, 5, 8, and 11.
252. Protocol No. 12 entered into force on April 1, 2005. As of January 18, 2008, 15 States were parties to the protocol.
253. Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Explanatory Report, at 22(iii).
254. *Timishev v. Russia*, App. Nos. 55762/00, 55974/00, Eur. Ct. Hum. Rts., Judgment of December 13, 2005, at 56.
255. Belgian Linguistics Case (No. 2), 1 EHRR 252, at 10 (1968); see also *Abdulaziz and Others v. United Kingdom*, Eur. Ct. Hum. Rts., Judgment of May 28, 1985, at 72.
256. See mutatis mutandis the case of *Abdulaziz and Others v. United Kingdom*, Eur. Ct. Hum. Rts., Judgment of May 28, 1985, at 81.
257. *Id.* (*Abdulaziz*), at 72.
258. In the *Inze* case, for example, the court found that proposed legislative amendments “show that the aim of the legislation in question could also have been achieved by applying criteria other than that based on [birth in or out of wedlock],” which it found to violate the ECHR. *Inze v. Austria*, No. 8695/79, Eur. Ct. Hum. Rts., Judgment of October 28, 1987, at 44.
259. *Timishev v. Russia*, App. Nos. 55762/00, 55974/00, Eur. Ct. Hum. Rts., Judgment of December 13, 2005.
260. *Id.*, at 39–44.
261. *Id.*, at 41.
262. In one judgment cited in *Timishev*, *Nachova v. Bulgaria*, the Grand Chamber held that the failure to investigate vigorously the racially motivated shooting of two Roma by Bulgarian military police violated the nondiscrimination guarantee of Article 14 taken in conjunction with Article 2 (right to life). Pertinent to ethnic profiling, the court endorsed another chamber’s assertion that, “[i]n order to maintain public confidence in their law enforcement machinery, Contracting States must ensure that in the investigation of incidents involving the use of force a distinction is made both in their legal systems and in practice between cases of excessive use of force and of racist killing.” *Nachova and Others v. Bulgaria*, (Eur. Ct. Hum. Rts.), Judgment of July 6, 2005, at 160.
263. *Id.*, at 58–59.
264. *Hoffmann v Austria*, Eur. Ct. Hum. Rts., Judgment of June 23, 1993, at 36.
265. *Gaygusuz v Austria*, Eur. Ct. Hum. Rts., Judgment of September 16, 1996, at 42.

266. To undertake this kind of analysis, researchers need data on police stops including the ethnicity of the person stopped. These data sets are generally lacking in Europe; many police forces do not record their stops or do not make this information publicly available and, for historical reasons discussed further in Annex II to this report, almost no countries record ethnic data. The United Kingdom is the only EU Member State that collects and, since 1992, regularly publishes statistics on ethnicity and police stop and search practices.

267. In a decision on admissibility in *Cissé v. France*, App No. 51346/99, January 16, 2001, the court declared inadmissible the portions of the application alleging a violation of Article 14 in conjunction with Article 5 in relation to a police evacuation of a Paris church that had been occupied by “a group of aliens from various African countries who had settled in France without residence permits” and who “in 1996 decided to take collective action to draw attention to the difficulties they were having in obtaining a review of their immigration status in France.” The Article 14/5 allegations related to the following facts: When evacuating the church, the police stopped and questioned all of the occupants. “Whites were immediately released while the police assembled all the dark-skinned occupants, apart from those on hunger strike, and sent them by coach to an aliens’ detention center.” Noting that a majority of the occupants of the church, including the applicant, belonged to the group of aliens from Africa who did not possess residence permits, the court noted that “the system set up at the church exit for checking identities was intended to ascertain the identity of persons suspect[ed] of being illegal immigrants. In these circumstances,” the court “[could not] conclude that the applicant was subjected to discrimination based on race or colour.”

268. For example in *Cobzaru v. Romania*, a case involving police violence against a Roma victim, the court observed: “that the numerous anti-Roma incidents which often involved State agents following the fall of the communist regime in 1990, and other documented evidence of repeated failure by the authorities to remedy instances of such violence were known to the public at large, as they were regularly covered by the media. [U]ndoubtedly, such incidents, as well as the policies adopted by the highest Romanian authorities in order to fight discrimination against Roma were known to the investigating authorities in the present case, or should have been known, and therefore special care should have been taken in investigating possible racist motives behind the violence.”

In *Cobzaru v Romania*, App. No. 48254/99, Eur. Ct. Hum. Rts., Judgment of July 27, 2007, at 97. Far from taking “special care” to investigate possible racist motives behind the violence, Romanian prosecutors had “made tendentious remarks in relation to the applicant’s Roma origin throughout the investigation.” *Id.*, at 98. The court found that these comments disclosed “a general discriminatory attitude of the authorities,” *id.*, at 100, and that this, together with “the failure of the law enforcement agents to investigate possible racial motives in the applicant’s ill-treatment,” constituted discrimination in violation of the ECHR. *Id.*, at 101.

269. *D.H. and Others v the Czech Republic*, App. No. 57325/00. Eur. Ct. Hum. Rts., Grand Chamber, Judgment of November 13, 2007.

270. *Id.*, at 184.

271. This case involved a challenge to discriminatory practices in public education.

272. Eur. Ct. Hum. Rts., *Gillan and Quinton v. the United Kingdom*, Application no. 4158/05, Judgment of January 12, 2010, at 85.

273. Eur. Ct. Hum. Rts., *Marper v. the United Kingdom*, Application no. 30562/04 and 30566/04, Judgment of December 4, 2008, at 125.

274. *Gusinskiy v. Russia*, App. No. 70276/01, Eur. Ct. Hum. Rts., Judgment of May 29, 2004, § 53, “[...] the suspicion must be based on reasonable grounds that form an essential part of the safeguard against arbitrary arrest and detention. The fact that a suspicion is held in good faith is insufficient. The words “reasonable suspicion” imply the “existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offense.” This ruling builds on the 1990 Judgment in *Fox, Campbell and Hartley v. The United Kingdom*, Application no. 12244/86; 12245/86 and 12383/86, Judgment of August 30, 1990.

275. Eur. Ct. Hum. Rts, *Gillan and Quinton v. the United Kingdom*, Application no. 4158/05, Judgment of January 12, 2010, at 87.

276. As police in EU member states consider this ruling in the light of the broad powers to stop and search that many European police enjoy, they should also consider the fact that the court in *Gillan*, while not ruling on the stop and search as an Article 5 violation (liberty), notes that:

In order to determine whether someone has been “deprived of his liberty” within the meaning of Article 5, the starting point must be his concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question. [...]

The Court observes that although the length of time during which each applicant was stopped and searched did not in either case exceed 30 minutes, during this period the applicants were entirely deprived of any freedom of movement. They were obliged to remain where they were and submit to the search and if they had refused they would have been liable to arrest, detention at a police station and criminal charges. This element of coercion is indicative of a deprivation of liberty within the meaning of Article 5.

Eur. Ct. Hum. Rts, *Gillan and Quinton v. the United Kingdom*, Application no. 4158/05, Judgment of 12 January 2010, at 56.

277. In its decision dismissing the applicant’s discrimination claim, the European Court emphasized that the applicant, an illegal African resident, had acknowledged her illegal status and organized a collective action of other illegal African aliens in a Paris church to protest their legal status. Under these narrow circumstances, the court concluded that it “cannot conclude that the applicant was subjected to discrimination based on race or colour” when law enforcement officers evacuating the charge singled out non-White occupants for further scrutiny.

278. *Bozano v. France*, App. No. 9120/80, Eur. Ct. Hum. Rts., Judgment of December 18, 1986, at 60–61 (finding breach of Article 5(1)(f) where a “deportation procedure was abused . . . for objects and purposes other than its normal ones”). Pretextual stops are a common police practice in many settings. To give one example, a French police officer told a researcher that: “If you are on the road and see a black man or a man with Arabic features you say to yourself, ‘He doesn’t look French,’ and then you might stop him to see if he has papers. While he is stopped you can search him and may find drugs or guns.” Cathy Schneider, “Police Power and Race Riots in Paris,” *Politics and Society*, Vol. 35, No. 4., December 2007.

279. In *Rosalind Williams*, Spanish Constitutional Court Decision No. 13/2001, January 29, 2001 (STC 13/2001).

280. See *Rosalind Williams Lecraft v. Spain*, Communication Submitted for Consideration Under the First Optional Protocol to the International Covenant on Civil and Political Rights, filing by the Open Society Justice Initiative, SOS Racismo, and Women's Link Worldwide, September 11, 2006, at http://www.justiceinitiative.org/activities/ec/ec_spain.

281. *Id.*, at 7.2 and 7.4.

282. *R v. Immigration Officer at Prague Airport ex parte Roma Rights Centre and Others* ("Roma Rights"), UnKHL 55, Judgment of September 17, 2004.

283. *R v. Immigration Officer at Prague Airport ex parte Roma Rights Centre and Others* ("Roma Rights"), UKHL 55, Judgment of September 17, 2004, at 2–4.

284. *Id.*, Opinion of Baroness Hale of Richmond, at 98.

285. *Id.*, at 81 (quoting Opinion of Laws LJ in Court of Appeals' judgment).

286. *Id.*, at 82–3. See also Opinion of Lord Carswell, at 113.

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The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. We foster accountability for international crimes, combat racial discrimination and statelessness, support criminal justice reform, address abuses related to national security and counterterrorism, expand freedom of information and expression, and stem corruption linked to the exploitation of natural resources. Our staff are based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, Freetown, The Hague, London, Mexico City, New York, Paris, Phnom Penh, Santo Domingo, and Washington, D.C.

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Ethnic profiling by police in Europe is a widespread form of discrimination that violates basic human rights norms. Ethnic profiling is also inefficient: it leads police to focus on racial and ethnic traits rather than genuine indicators of suspicion, and results in stopping and searching large numbers of innocent people. Fortunately, better alternatives exist—approaches to policing that are fairer and more effective. This handbook documents those approaches and offers guidance to help cut down on discrimination and increase police efficacy.

Reducing Ethnic Profiling in the European Union provides diagnostic questions, field-tested ideas for reform, and proven models of good practice for reducing ethnic profiling. It is intended to help police officers, law enforcement agencies, oversight institutions, civil society organizations, and community representatives better understand the dynamics and costs of ethnic profiling, and aid them in developing new partnerships, policies, and practices to address the problem.

The nearly 100 case studies gathered in this handbook show that efforts to address ethnic profiling can succeed. Such efforts not only reduce discriminatory policing practices and outcomes, but also enhance the overall quality and efficiency of law enforcement.

