

Rule of Law, Equality and Non-Discrimination Branch
Office of the United Nations High Commissioner for Human Rights

The Rule of Law, Equality and Non-Discrimination Branch (ROLENDB) of the Office of the United Nations High Commissioner for Human Rights (OHCHR) welcomes the opportunity to provide comments on draft General Recommendation No. 36 (GR 36) on Preventing and Combatting Racial Profiling and commends the Committee on the Elimination of Racial Discrimination (CERD) for its issuance. The Branch is engaged, *inter alia*, in the provision of legal and thematic advice to various stakeholders, servicing of intergovernmental and expert mechanisms, support to technical cooperation, organization of capacity building initiatives, preparation of policy-oriented research and tools, across four primary areas, namely: rule of law and democracy, women's rights and gender, indigenous peoples and minorities, and anti-racial discrimination.

The draft GR 36 includes key issues, which are important for the work of the Branch. The Branch welcomes the work of the Committee on this important recommendation, which provides guidance to States Parties to the Convention as well as civil society actors and UN agencies that work on the implementation of the Convention. It offers the suggestions below with the aim of assisting the Committee in its deliberations.

The current draft of GR 36 appears to focus mainly on racial profiling by law enforcement. It considers other dimensions, in a less comprehensive manner. For this purpose, it is suggested to include references to law enforcement officials and agencies in the title and throughout the text.

Paragraph 16, offers a working definition of racial profiling. Adopting a working definition could facilitate the practical implementation of GR 36 by Member States, in particular by law enforcement agencies and officials. Several working definitions of racial profiling already exist for various purposes. In this regard, it is suggested that CERD takes into consideration paragraph 72 of the Durban Programme of Action. It would be also important to point out that Member States should prohibit racial profiling.

In view of the comprehensive work of CERD on the notion of intersectionality, it is suggested that GR 36 highlights this concept throughout the whole text. In General Recommendation No. 32, CERD noted that the “grounds” of discrimination are extended in practice by the notion of “intersectionality” whereby the Committee addresses situations of double or multiple, discrimination - such as discrimination on grounds of gender or religion – when discrimination on such a ground appears to exist in combination with a ground or grounds listed in article 1 of ICERD. CERD also recognized that specific groups, such as indigenous peoples, minorities, including the Roma and ethno-religious minority groups, people of African descent, migrants, and those discriminated against on the basis of work and descent encounter higher risks for, *inter alia*, checks, searches and detention by law enforcement, notably due to their physical appearance, including skin colour or presumed racial or ethnic origin.¹

GR 36 addresses the issue of artificial intelligence, as a tool used by law enforcement, which is welcomed. In view of the scope of the Recommendation and its practical implementation, it

¹ See for example: CERD/C/MUS/CO/20-23 CERD/C/BLR/CO/20-23; CERD/C/RUS/CO/23-24 ; CERD/C/CAN/CO/21-23 ; CERD/C/ITA/CO/19-20; CERD/C/ESP/CO/21-23; CERD/C/SVN/CO/8-11; CERD/C/TUR/CO/4-6; CERD/C/NLD/CO/19-21; CERD/C/DEU/CO/19-22

is suggested to focus the text on algorithmic profiling. Given the prevalence of private sector entities in the development and operation of algorithmic profiling systems, it is suggested to include recommendations to business enterprises, based on the UN Guiding Principles on Business and Human Rights.

The Branch wishes the Committee successful deliberations and outcome of this important text.