



BOFAXE

Prohibition of Racial Discrimination is not Enough

Revisiting the Obligation to Provide Human Rights Training to Police after the Killing of Nahel M. in Paris

On 27 June 2023, 17-year-old Nahel M. was fatally shot by police during a vehicle stop in Paris, sparking nationwide [riots](#). On the basis of video evidence, a number of [comments](#) allege that the stop and ensuing excessive violence were motivated by stereotypes against persons of North African descent, concluding that the responsible officers engaged in both racial profiling and racist violence. The UN Committee on the Elimination of Racial Discrimination (CERD) seized this opportunity to adopt a [statement](#) on 7 July 2023, addressing not only Nahel M.'s case but also recalling the general obligations under the [ICERD](#) in relation to the prevention of racial discrimination by police.

While previous posts on Völkerrechtsblog have addressed racial profiling [generally](#) and effective remedies for victims [specifically](#), this post focuses on the often-overlooked preventative aspect: the obligation to provide law enforcement with appropriate human rights training to combat institutionalized prejudice. Although many States, including France, stress that their legislative framework provides sufficient safeguards, it must be remembered that “[h]uman rights education and training are vital to ensuring that police officers do not discriminate” ([CERD GR No. 36](#), para. 45).

Racial Profiling as a Systemic Issue Requiring a Systemic Response

Racial profiling is not the only manifestation of racial discrimination in law enforcement, but in cases like Nahel M.'s, it constitutes the starting point for further discriminatory acts, such as racist violence. Various definitions of racial profiling exist, which share common elements. Typically, it pertains to actions and decisions made by law enforcement, including stops, searches, identity checks, investigations, and arrests, lacking objective criteria and instead relying on perceptions of race, color, descent, and national or ethnic origin and which take place in the context of preventing alleged instances of illegal immigration, terrorism, and other crimes (see [CERD GR No. 36](#), para. 13, 14, [IACHR](#), para. 143, and [Durban Programme of Action](#), para. 72). Racial profiling is not only discriminatory and, therefore, illegal, but also bad policework. Studies show that racial profiling provides no criminological value but instead hinders effective policing by alienating groups whose cooperation is necessary (see, for example, [Open Society Justice Initiative](#), pp. 26-28).

Racial profiling is not primarily an issue of individual attitudes but a consequence of the “discriminatory culture or policies of law enforcement agencies” and a “long-standing practice in many agencies” instead of a collection of isolated incidents ([UN Secretary-General](#), p. v). Further complexity arises from the fact that racial profiling is rarely set out explicitly in regulations but instead arises out of the individual and collective subconscious (see [ibid](#), p. 11). Consequently, mere rule changes or sorting out singular “bad apples” are insufficient measures. Instead, a wholistic approach is required to raise awareness among stakeholders, help them accept that they may be part of the problem, and require them to work on changing subconscious biases (see [Open Society Justice Initiative](#), p. 29). This approach is mandatory under international law, which frequently evades the perception of States, as will become apparent in the next Section..

The CERD and Systemic Racism French Law Enforcement

The CERD has repeatedly reminded France of its obligations regarding racial discrimination in law enforcement. In its most recent report on France, the Committee recognizes efforts at the planning level but expresses concern that systemic racism still permeates French society (see [CERD Concluding Observations](#), para. 4, 9, 33). Regarding racial profiling in particular, the CERD voices its concerns about frequent discriminatory stops, checks, and fines disproportionately targeting racial minorities. It recommends legislative measures and clear guidelines for law enforcement, judicial control, traceability of such acts, and the monitoring of complaints ([ibid](#), para. 23).

The experts stress that having rules and plans against racial discrimination in law enforcement on paper is not sufficient. Implementation of these formal guarantees requires decisive positive measures, such as the provision of adequate human, financial, and technical resources as well as the creation of effective coordination mechanisms ([ibid](#), para. 10). Another practical proposal is increasing ethnic diversity within front-line police service ([ibid](#), para. 24 (e)). However, the effectiveness of such an approach is heavily debated. Some [scholars](#) are skeptical, partly because of the pressure for police officers to conform with the culture within police departments, which officers belonging to ethnic minorities are not generally exempt from. This skepticism is supported by a [study](#) showing that greater minority representation in law enforcement does not reduce racial disparities in traffic stops.



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With doubts rising about the effectiveness of diversification, it is clear that governments should at least not rely on it as a panacea for combating racial discrimination. The CERD further stresses repeatedly that Article 2 ICERD creates an obligation to provide comprehensive human rights training on the Convention for officials, including enforcement agencies (ibid, para. 7, 8, 26 (f)).

In the recent [statement](#) on Nahel M.'s killing, the CERD expresses dissatisfaction by criticizing a “continuing practice of racial profiling combined with the excessive use of force by law enforcement officials [...] against members of minority groups [...] which frequently results in disproportionately recurrent killings with near impunity”. Against this backdrop, the CERD demands a “thorough and impartial” investigation into Nahel M.'s killing and focuses on general steps that the State must take concerning the “structural and systemic causes” of racial discrimination. This includes adopting legislation and guidelines defining and prohibiting racial profiling, as well as reviewing the rules governing the use of lethal force by law enforcement. A considerable part of the statement focuses on measures beyond rules and regulations, demanding “immediate and appropriate reforms aimed at eliminating structural discrimination in the criminal justice system”, promoting ethnic diversity within the police force, and fostering understanding between law enforcement and minority groups. Specifically, the CERD stresses that France should “introduce continuous training to law enforcement officials, particularly on de-escalation techniques and on relevant international standards”.

The French government's reaction arguably shows that there is still not a sufficient understanding of this differentiated approach. In their [official response](#), the French authorities speak of “excessive statements” by the CERD and stress that “[a]ny accusation of systemic racism or discrimination by the police in France is unfounded”. Instead of acknowledging the need to address deeply rooted prejudices, the statement continues to declare that “[a]ll ethnic profiling measures by police are banned in France” and that the use of force is “governed by the principles of absolute necessity and proportionality”. France indirectly acknowledges the need for further measures by stating that “[t]he fight against police-check abuses based on racial profiling has been stepped up” and by referring to newly established reporting tools. However, France does not acknowledge the need for any further positive measures such as specific human rights training, despite the extensive guidance provided by the CERD on this issue, which will be explored in the next section.

The Requirement of Human Rights Training under the ICERD

Reducing institutionalized prejudice in the police is a challenging but legally binding obligation under the ICERD. Article 2 (1) of the ICERD establishes the obligation to “pursue by all appropriate means and without delay a policy of eliminating racial discrimination”. To this end, Article 2 (1) (a) of the ICERD continues, States parties shall “engage in no act or practice of racial discrimination” and must “ensure that all public authorities [...] shall act in conformity with this obligation”. Racially motivated police measures and excessive violence based on racial prejudices clearly violate this prohibition of discrimination.

Article 2 (1) (a) ICERD is sometimes described as a negative obligation, simply demanding that States refrain from discriminatory actions (see, for example, [Lerner](#), p. 41). However, the CERD clarified during the 1990s that compliance with Articles 2 (1) and 7 of the ICERD depends upon providing education and information ([CERD GR No. 13](#), para. 2). The experts hold that “[l]aw enforcement officials should receive intensive training to ensure that in the performance of their duties they respect as well as protect human dignity and maintain and uphold the human rights of all persons without distinction as to race, colour or national or ethnic origin” (ibid).

In its recent General Recommendation, dedicated to racial discrimination in policing, the CERD provides further detail regarding the preventive measures that States parties should take. Besides appropriate legislation, the experts demand that States parties ensure the development of internal policies and standard operating procedures, as well as monitoring and audits for the police which address the issue of racial profiling ([CERD GR No. 36](#), para. 38-41). But the Committee recognizes that setting out these rules is not enough and additionally demands “specialized, mandatory training programmes for law enforcement agencies that raise awareness [...] about the impact of biases on their work and that demonstrate how to ensure non-discriminatory conduct.” These programmes should include members of stigmatized groups, national human rights institutions, and civil society on the level of development and delivery (ibid, para. 42, 45).



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The effectiveness of human rights training programmes depends heavily on their precise design. A detailed [study](#) of such programmes revealed that programmes should focus on the realities of policing, which is an area where human rights experts (alone) might not be best situated. Accordingly, a UN guide on human rights training for law enforcement recommends collegial training and sets out an extensive list of participatory methods (see [OHCHR](#), pp. 3-11). With these measures, human rights training should teach key operational and analytical skills to officers as well as addressing the deeper sources of discrimination, namely attitudes and biases (see [Suntinger](#), pp. 293-302). Because racial discrimination in the police is a systemic issue, training programmes cannot focus only on the individual but must instead be embedded in systematic approaches, which take into account the organizational environment of law enforcement (see *ibid.*, pp. 291-293 and [Celermaier](#) pp. 11-13). If effectiveness of human rights training is not evaluated regularly, the concept runs the risk of being just another shibboleth, which States can invoke to show that they are doing *something* while real change falls by the wayside.

Conclusion and Outlook

Not only in France, racial discrimination in general and racial profiling more specifically have become an increasingly pressing issue (see [CERD GR No. 36](#), para. 10, [UN Secretary-General](#), p. v, and [UN Expert Mechanism](#)). The CERD repeatedly criticizes the failure of States parties to take proactive measures against institutionalized racism in the police ([CERD GR No. 36](#), para. 5). Concerns have heightened even more during the last years because of an increasing reliance of law enforcement agencies on artificial intelligence and algorithmic profiling. The CERD has now sharpened its focus on algorithmic bias in this context and stresses that this area needs to be observed carefully (*ibid.*, para. 12, 31-36, 58-69).

The defensive attitude of French authorities towards the CERD statement illustrates the ineffectiveness of the early warning and urgent action procedures (see [Castellino](#), pp. 243, 244). [Reports](#) suggests that violence against minority groups at the hands of French police has continued during the protests and after the CERD statement. It is urgently necessary to reevaluate these procedures to allow the CERD to have a sufficient impact in the fight against racial discrimination.