

Ethnic Profiling in Spain

*Statement Submitted by the Open Society Justice Initiative for
Consideration by the United Nations Human Rights Council at
its Eighth Session, on the occasion of its Universal Periodic
Review of Spain*

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INTRODUCTION

Police officers engage in “ethnic profiling” when they use ethnic or racial stereotypes as a basis for suspicion in directing law enforcement activity. This is a particular concern in police-initiated stops—typically identity checks that may lead to a search. Evidence of ethnic profiling in Spain is both empirical and anecdotal. Minorities and immigrant communities routinely report discriminatory treatment by the police, particularly in police decisions about whom to stop, search, and at times, arrest. Studies have confirmed that all ethnic minority groups are stopped more—sometimes far more—than ethnic Spaniards. Media reports and other sources assert that police in Madrid have been set weekly quotas for arresting illegal immigrants and are told to hunt for potential detainees outside their own districts if they cannot meet the targets. The United Nations Human Rights Committee has ruled that this practice is discriminatory and breaches Spain’s international treaty obligations. There is no evidence that ethnic profiling serves to prevent terrorism or lower crime rates. Instead, as demonstrated by one study with municipal police in Spain, the use of ethnic stereotypes distracts police from gathering better intelligence and conducting effective operations, wasting resources and undermining efforts to combat crime. Ethnic profiling also alienates minority communities and creates hostility toward law enforcement. We recommend that the Spanish government publicly renounce the practice of ethnic profiling, amend its legal provisions regulating police use of identity checks, and provide clear practical instructions for police officers on avoiding discriminatory stereotypes in the conduct of identity checks.

ETHNIC PROFILING IN SPAIN

Spanish law explicitly bars any form of racial or ethnic discrimination. However, both anecdotal and empirical research reveal that ethnic profiling is not only frequently practiced in Spain, but mandated. Police trade unions indicate that police in Madrid are given weekly quotas for arresting illegal immigrants, and are instructed to hunt for potential detainees outside their own districts in order to meet the targets. In addition, a study conducted by the Justice Initiative in partnership with the Spanish NGO GEA21 found that all ethnic minority groups in Spain are stopped more often by police than ethnic Spaniards. In Girona, the study found that municipal police stopped Moroccans 6.7 times more often than Spaniards, and Romanians 10 times more often. The regional police not only stopped ethnic minority groups more often, they also searched ethnic minorities at highly disproportionate rates (70 percent of Moroccans stopped and 77 percent of Romanians who were stopped were searched, compared to 52 percent of Spaniards). Fuenlabrada, a second pilot site of the study, had similar levels of ethnic profiling. Yet by working with participating police forces, the project demonstrated that reduction of unfair policing enhances efficiency in crime reduction. Indeed the study showed that reducing racial or ethnic discriminatory practices does not jeopardize safety, but in fact enhances the effectiveness with which officers use stop and search powers.

The practice of ethnic profiling in Spain recently received the attention of the Human Rights Committee. In July 2009, the Committee gave its judgment in respect of a communication submitted by Ms. Rosalind Williams Lecraft alleging a violation by Spain of articles 2, 12(1), and 26 of the International Covenant on Civil and Political Rights arising from discriminatory treatment she received during a police identity check.

Williams, a naturalized Spanish citizen, was stopped by a National Police officer at the Valladolid rail station in Spain. Of all the people on the train platform, she was the only one to be stopped and asked for her identity documents. She was also the only black person on the platform. Her

legal challenge to the identity check, claiming she was targeted because of her race was ultimately rejected in 2001, by the Spanish Constitutional Tribunal. In its decision the Constitutional court approved the practice of relying on specific physical or racial characteristics as "reasonable indicators of the non-national origin of the person who possesses them," arguing that racial criteria are "merely indicative of the greater probability that the interested party [is] not Spanish." The court's endorsement lent legitimacy to a pervasive discriminatory policy of ethnic profiling that had for years been widely documented by human rights monitoring bodies.

In finding that Spain's practices violated of the International Covenant on Civil and Political Rights, the Human Rights Committee concluded that while identity checks might be permissible for protecting public safety, the prevention of crime, or to control illegal immigration

the physical or ethnic characteristics of the persons targeted should not be considered as indicative of their possibly illegal situation in the country. Nor should identity checks be carried out so that only people with certain physical characteristics or ethnic backgrounds are targeted. This would not only adversely affect the dignity of those affected, but also contribute to the spread of xenophobic attitudes among the general population; it would also be inconsistent with an effective policy to combat racial discrimination.

RECOMMENDATIONS TO THE UPR WORKING GROUP

The Justice Initiative urges the UPR Working Group to make clear that discrimination in policing is incompatible with Spain's human rights obligations, and recommend that Spain:

- (a) Reiterate the United Nations Human Rights Committee's conclusion and *issue a public statement* that "physical or ethnic characteristics . . . cannot be deemed indicative of . . . possible illegal presence in the country" and that identity checks may not "target only persons with specific physical or ethnic characteristics."
- (b) Immediately *issue an instruction to all police forces*, and *amend the provisions that regulate police conduct of identity checks* under both the *Ley Orgánica 4/2000 sobre derechos y libertades de los extranjeros en España y su integración social* and the *Ley Orgánica 2/1986 de Fuerzas y Cuerpos de Seguridad* to make clear that race, ethnicity and/or physical characteristics may not be the basis for decisions about which person(s) to stop for an identity check, except when they form part of a specific suspect description or derive from specific and reliable intelligence; and
- (c) Instruct all police forces to issue operational guidance manuals on these modifications of identity check powers, which shall *provide clear and practical instructions for police officers on the formulation of suspicion* as well as identify situations where factors such as race, ethnicity and other physical characteristics can be taken into account and when they can not.

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E-mail: info@justiceinitiative.org

Abuja

Plot 1266/No.32
Amazon Street
Maitama, Abuja, Nigeria
Phone: +234 9 413-3771
Fax: +234 9 413-3772

Budapest

Oktober 6. u. 12
H-1051 Budapest, Hungary
Phone: +36 1 327-3100
Fax: +36 1 327-3103

London

Cambridge House
100 Cambridge Grove
Hammersmith London
W6 0LE United Kingdom
Phone: +44 207 031 0200
Fax: +44 207 031 0201

New York

400 West 59th Street
New York, NY 10019 USA
Phone: +1 212-548-0157
Fax: +1 212-548-4662

Washington DC

1120 19th Street, N.W., 8th Floor.
Washington, DC 20036 USA
Phone: +1 202 721 5600
Fax: +1 202 530 0128

www.justiceinitiative.org



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