

Summary:

Report of the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement A/HRC/51/55. 4 August 2022

Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers

In its first report, the Expert Mechanism (EMLER) provides an overview of its activities since its establishment with the resolution 47/21 in December 2021. As well as presenting its salient methods of work and the methodology it pursues in fulfillment of its mandate.

The report also provides reflections and recommendations about the importance of the collection, publication, analysis and use of data disaggregated by race or ethnic origin on the interactions of people of African descent with law enforcement authorities and the criminal justice system – as a central element for driving and assessing responses to systemic racism.

II. Mandate and guiding principles

The mandate of the EMLER is aimed at furthering transformative change for racial justice and equality, in the context of law enforcement globally, the EMLER analyzes systematic racism and the root cause in law enforcement, including violation of international human rights. Based on engagement with States, law enforcement personnel, victims, directly affected communities, civil society, and other stakeholders, it also makes and monitors recommendations regarding domestic regulation of the use of force.

III. Activities

- First private session in person in Geneva/ 28 February - 4 March 2022

Together with a public meeting open to all stakeholders, seeking information and views from stakeholders on the implementation of the EMLER

- 15 meetings and consultations remotely and in person with a wide variety of stakeholders

Private meeting with around 30 representatives of 20 civil society organizations from around the world, many of African descent.

- The chair of the Expert Mechanism participated in the 27 session of the Advisory Committee/ Feb 2022

Makes proposals to advance racial justice In the fulfillment of the 2030 Agenda for SDG and to present the study to the Human Rights Council at its fifty-fourth sesión.

- Virtual consultations/ May 2022

Close to 70 participants, many of whom were of African descent. On the need to collect, analyze, use, and publish data disaggregated by race or ethnic origin to advance racial justice and equality in order notably to inform the present report.

IV. Need for the collection, analysis, use and publication of data disaggregated by race or ethnic origin to advance racial justice and equality

A. Disaggregated data – a key element for achieving racial justice and Equality

The collection of data disaggregated by race or ethnic origin is central to any effort to drive and assess responses to systemic racism, including objectively measuring the impact of corrective measures and subsequent reforms. It is also central to achieving the right to non-discrimination.

Recent consultations have confirmed the High Commissioner’s findings from her report to the Council in June 2021: States continue to deny or have failed to acknowledge the existence and impact of systemic racism, especially institutional racism.

Data collection ensures analysis that captures intersectionality. Also, information received by the EMLER recommended the georeferencing of data, since adopting a territorial approach may allow for the identification of patterns of violence and local, regional and national impacts.

B. Existing guidance on the collection and use of data disaggregated by race or ethnic origin

The EMLER made an analysis of the principles and documents related to the data cycle: participation, data disaggregation, self-identification, transparency, privacy and accountability¹.

The main institutional documents and methodologies analyzed were: The Committee on the Elimination of Racial Discrimination, The United Nations Office on Drugs and Crime, which provides a framework for the systematic production and comparison of statistical data across different criminal justice institutions and jurisdictions, the European Commission- its anti-racism action plan (2020–2025), states that accurate and comparable data are essential in enabling policymakers and the public to assess the scale and nature of discrimination suffered, and for designing, adapting, monitoring and evaluating policies.

In Latin America and Caribbean region the EMLER analyses, The Economic Commission for Latin America and the Caribbean and OHCHR, launched a set of indicators to measure ethnic and racial inequalities and gaps between Afrodescendent and non-Afrodescendent populations in the region. On the other hand, The Inter-American Commission on Human

¹ (OHCHR) “A human rights-based approach to data: leaving no one behind in the 2030 Agenda for Sustainable Development

Rights, established that Official statistics should distinguish between the context of use-of-force incidents, the actors involved, the weapons used, the rights violated, and the circumstances of time and place, among others.

C. Challenges in the collection and use of data disaggregated by race or ethnic origin

Many States continued to be reluctant to engage in the collection and use of data disaggregated by race or ethnic origin. Some States go as far as prohibiting, by law, the collection of ethnic-based statistics².

The reasons involve: considering an obstacle to the building of a unified national identity; to fearing that it would lead to further discrimination and aggravate tensions between ethnic groups; prohibit on the grounds that legislation ensures the equality of all citizens before the law, without distinction on grounds of race or ethnic origin; and also encompass human rights concerns, such as racist and exclusionary policies, violation of the right to privacy, and concerns around the protection of personal data.

The law and some legal obstacles include Article 9 of the European Union's General Data Protection Regulation: it provides for a general prohibition on the processing of personal data revealing characteristics including racial or ethnic origin. Federal States are an additional challenge in reconciling state- and local-level data with federal-level data, as they are collected in different ways and with varying levels of quality.

D. Specific challenges linked to data related to law enforcement and the criminal justice system

Consultations indicated that across regions data was deemed sensitive and seen as a challenge to authority, which results in strong reluctance or even refusal to produce or publish the data. Also, guidelines recommend self-identification, however people of African descent may, be reluctant to self-identify as a member of a group which may traditionally be targeted through racial profiling or discriminated against.

Other challenges include: the information and data are scattered, making it difficult to get a complete picture of interactions with law enforcement authorities, the use of artificial intelligence, including bias in technological novelties, such as facial recognition, with the inherent risk of racially biased data can contribute to overpolicing and overtargeting of communities of African descent. Finally, further research should seek to quantitatively analyze the impact of officer race on law enforcement outcomes.

E. Overcoming challenges in the collection and use of data disaggregated by race or ethnic origin

Addressing the challenges through: (a) methodology and (b) perception.

² This is the case of France (Loi informatique et libertés, 1978, art. 6; and Penal Code, art. 226-19).

Methodology: Implement the right to privacy and the protection of data, and that the process of collection of data be participatory and based on informed consent and self-identification, which will not lead to additional discriminatory treatment such as racial profiling.

Perception: Specific efforts should be made to explain the benefits of collecting and using disaggregated data in moving towards enhanced professionalism, transparency and legitimacy

F. Innovative ways to address challenges

Other official surveys may shed light on possible disparities with regard to policing or the criminal justice system e.g. surveys undertaken with persons deprived of their liberty could be expanded and Surveys related to health, victimization surveys and hate crime surveys and the use of proxy data can also shed some light on interactions.

The most common way in which data disaggregated by race or ethnic origin is made available is through data collected and analyzed by non-governmental organizations, academic and research institutions, and national human rights institutions; however it places an undue burden on petitioners, and it may delay the publication of important data. On the other hand, regional bodies were also highlighted as being able to undertake some data collection which may not be conducted at the national level.

Good practices include: Data collection and publication should be mandatory at the State level, and independent authorities such as national human rights institutions should be empowered to publish the data and Law enforcement personnel should be able, and should be required, to account for the reasons why they carried out the procedure

G. Guidelines on the use of data disaggregated by race or ethnic origin

Drive the change for racial justice implies: Going beyond more visible human rights violations to examine other recurring disproportionate impacts of laws and practices, data can show how policing resources are allocated to specific communities, how the police process complaints, and how many victims and families obtain legal aid, analyses what “safety” means for Africans and people of African descent.

The European Commission recommends collecting data on experiences of discrimination of different groups, on different grounds and in different areas of life, as one of the most effective ways to assess the effective implementation of anti-discrimination legislation.

H. Illustrative initiatives

Among other initiatives the EMLER highlighted, the equality body Unia in Belgium, the province of British Columbia (Canada), introduced the Anti-Racism Data Act, the National Consultative Commission on Human Rights in France and the Equitable Data Working Group in US, the National Survey of Police Standards and Professional Training (Mexico);

the Index of Effective Access to Justice (Colombia); and the Strategy for the Harmonization of Statistics in Africa.

Finally, possible promising initiatives include civil society and academic institutions sharing their methodologies widely to allow others to replicate in other territories; and the “translating” of data and analysis thereof for the communities, so that they can advocate for change.

V. Conclusions and recommendations

- The EMLER notes the immense challenges in some States in the collection, publication, analysis, and use of data disaggregated and ensure that these processes have to integrate a human rights-based approach through the principles of transparency and participation.
- There is a lack of trust in the data, and doubts about whether any change will happen. This must be addressed and requires leadership with respect to law enforcement authorities, to recognize the potential in bringing positive change for the communities.
- Collection systems should be a priority of criminal justice operations and should include self-identification data and intersectional forms of discrimination. However, given the low reported on these crimes, data should be complemented by officer-led ID data for comparative purposes and to highlight conscious or unconscious bias; as well as qualitative surveys.
- For an effective change it is necessary to enhance capacity, robust technical assistance, and resources for analysis. Most of the countries from LA and the Caribbean have signaled challenges in fulfilling international data reporting requirements and have lost funding.
- National action plans against racism should include the methodology of OHCHR on human rights indicators, on how to collect, publish and analyze data disaggregated by race or ethnic origin, as well as indicators to track and monitor the progress.
- The role that civil society organizations, researchers and academic institutions, and also the direct participation of people of African descent should be recognized and supported to raise visibility and foster advocacy for change with an enabling safe and protective environment. This includes ensuring that these organizations have access to funding and resources. National human rights institution’s role in publicizing official and non-official data should be acknowledged.
- The EMLER invites relevant United Nations mechanisms and processes to work together to assist States in adopting effective methods and tools for data collection, to introduce transparency and oversight safeguards; and to document cases of racial discrimination associated with artificial intelligence, along with sanctions and effective remedies.