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DATA-DRIVEN POLICING: THE HARDWIRING OF DISCRIMINATORY POLICING PRACTICES ACROSS EUROPE

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european network against racism aisbl

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APPROACH

This report was prepared by Patrick Williams and Eric Kind with the support of the Open Society Foundations. The project was managed by Rebekah Delsol, from the Open Society Justice Initiative, and Becky Hogge, from the Open Society Foundations. The report benefited from the advice and guidance of an advisory panel consisting of:

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FOREWORD

We, as activists, as anti-racist organisations, and as racialised communities in Europe, know too well what it means to be over-policed and under-protected. Still, in 2019, we feel the need to evidence racial profiling, to contest narratives placing us as a threat to 'security' and essentially to unsettle presumptions as to our criminality.

We are still mastering the techniques with which we contest over-policing, brutality and racial profiling. We must now contend with another challenge. When law enforcement resorts to new technology to aid their practice, we find ourselves at further risk. Not only must we consider our physical safety in our relations with the authorities, we also need to be informed about the security of our data.

The use of systems to profile, to surveil and to provide a logic to discrimination is not new. What is new is the sense of neutrality afforded to data-driven policing. This report opens a conversation between all those invested in anti-racism, data privacy and non-discrimination in general. It is crucial that we use our collective knowledge to resist.

Karen Taylor, Chair,

European Network Against Racism (ENAR)

INTRODUCTION

Across Europe we are witnessing the increased use of technologies to assist policing and wider law enforcement practices. While some of these technologies are not new, law enforcement's increased resort to data sharing and analytics, and predictive policing tools to direct policing resources has concerning implications for minority ethnic and marginalised communities.

Law enforcement agencies present technology as 'race' neutral, independent of bias, and objective in their endeavour to prevent crime and offending behaviour. Such claims overlook the overwhelming evidence of discriminatory policing against racialised minority and migrant communities across Europe. For people of African, Arab, Asian and Roma descent, alongside religious minority communities, encounters with law enforcement agencies of many European countries are higher than for majority white populations. Whether in interactions with the police or numbers in prisons, European criminal justice systems are policing minority groups according to myths and stereotypes about the level of 'risk' they pose, rather than their behaviour.

This report explains the potential effects of the increased use of data-driven technologies for minority groups and communities. It combines our collective understanding of criminological processes of criminalisation with information about the incursion of new technologies into contemporary policing. There is an urgency to consider the potential (mis)uses of data-driven police technologies for racialised minority groups. At present, we face (public and private) organisational silences that conceal technology from public scrutiny and accountability. This is further complicated through ongoing debates concerning the reliability, validity and/or ethics of data use upon which much of these new tools are based.

Within this report, 'hardwiring' refers to the process of incorporating historical and prospective police and law enforcement data into technology to support the policing function. We argue in this report that the introduction of new technology is negatively impacting ethnic minority communities in three ways:

1

The impact of new technologies to identify, surveil and analyse will be **disproportionately felt by minority ethnic communities**, as they are already over-policed. This includes crime-analytics as well as the use of mobile fingerprinting scanners, social media monitoring and mobile phone extraction among others.

2

Many algorithmically driven **identification technologies disproportionately mis-identify people from black and other minority ethnic groups**. For communities that are already over-policed, such technological limitations, found for example in facial recognition, will increase further the likelihood of discriminatory stop and search, due to technological misidentification(s).

3

Finally, predictive policing systems are likely to **present geographic areas and communities with a high proportion of minority ethnic people as 'risky'** and subsequently, foci for police attention. Predictive policing systems, responding to calls for improvements in crime detection, have been developed based upon data that reflects ethnic profiling and racist policing. This will result advertently in the 'hardwiring' of historical racist policing into present day police and law enforcement practice.

The presence of new technologies both assists and drives over-policing by providing law enforcement agencies with risk-making capabilities, alongside developing databases which contain racialised stereotypical assumptions of minority communities.[1]

The report has three main sections. Firstly, we set out disparities in policing based on ethnic, nationality and religious categories across Europe. We take as our starting point ethnic profiling as intrinsic to European law enforcement practices and in so doing utilise key concepts such as suspicion, risk and 'risk-making', and the racialised tendencies of criminalisation.

The second section gives a high level overview of the 'surveillance industry' responsible for developing policing technologies, with a discussion of its role in the policing eco-system, and their claims of scientific objectivity and technological ('race' and ethnic) neutrality. We introduce a broad spectrum of policing technologies, conceptually grouped as identification technologies; data harvesting and network mapping technologies; database fusion, enrichment and analysis tools; and then predictive policing tools. We include discussion of facial recognition, automatic number plate recognition, voice print identification, finger-print identification, social media monitoring, the use of telephone call detail records, mobile phone extraction, IMSI catchers, body worn cameras, data sharing and the creation of new databases, and both person based and place based predictive policing tools.

We feature case studies throughout to emphasise particular practice by a police force in a certain country serving to highlight the implications of data-driven technologies for maintaining racial profiling and discriminatory policing practices. In noting the cumulative and racialising risk-making effects of data-driven technology, we focus attention on technologies that drive the 'criminalising communities' and 'crime anticipation systems'.

We envisage that this report will help set out the basic information about the harms of racialised police practices and the potentially harmful effects that data-driven technologies present. The report concludes by identifying some future challenges and opportunities for activism, areas that need further research, and recommendations for action as initial steps in building resistance against the hardwiring of discriminatory policing practices across Europe.

RACIAL DISPARITY IN POLICING

Ethnic, nationality and religious disparity across Europe

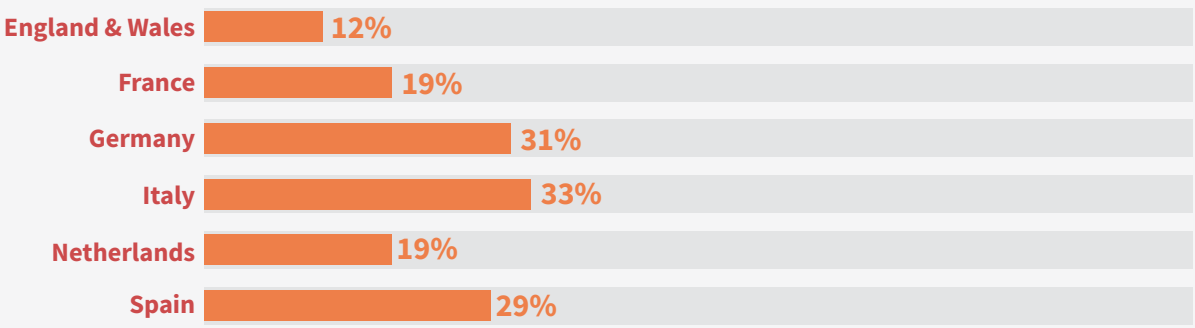
Across Europe, minority ethnic groups and communities consistently report experiences of over-policing by police and law enforcement agencies. Most recently, the UK government commissioned Lammy Review confirmed the existence of a 'racial disparity' characterised by increased rates of stop and search, prosecution, punishment and imprisonment for minority groups and communities when compared to the 'majority' population.[2] Such findings are clearly replicated across Europe where 'foreign nationals' are over-represented in prisons (see chart below).

Added to this, evidence from the EU Fundamental Rights Agency shows that 14% of respondents to the survey were stopped within the preceding 12 months, with 40% indicating this was due to their 'immigrant or ethnic minority background'.[3] In England and Wales, black people are more than nine times more likely to be stopped and searched by the police, a figure that increases to over twenty times in particular areas in England and Wales.[4] Collectively, the 'black'[5] group were at greatest risk of being stopped and searched by the police - where in Austria, a majority (66%) of Sub-Saharan African respondents were stopped by the police within the preceding five year period. The same applies to 38% of black people in Finland and 30% in Lithuania. People of North African background were subject to significant levels of police stops in France (31%), Italy (32%), Netherlands (33%). For those of South Asian background in Greece, the figures are 59%, in Cyprus 43% and 22% in Italy. Just under half of Roma people in Greece (47%) were stopped, with 46% of respondents in Spain, and 45% in Hungary.[6]

Beyond the personal and emotional effects of over-policing (to be discussed below), it is important to recognise the criminalising effects of targeted profiling. In particular, these practices afford the police and law enforcement agents with opportunities to gather information about certain communities based on the assumption that they present a heightened risk of criminal activity. By 2005, the UK government had established what was regarded as the largest DNA database in the world upon which the details of 135,000 black males aged between 15 and 34 years of age were held, representing three-quarters (77%) of the overall database.[7] On the one hand, this serves to illustrate the high levels of stop and search and the gathering of DNA information and further demonstrates the reality of ethnic profiling as an intrinsic feature of policing.

To be stopped and searched and/or subject to over-policing is not a measure of criminality or the propensity to crime, but rather, the state's formal response to (ethnic, religious and nationality) groups who are presented as 'outsiders' and as not belonging to the country within which they reside. Therefore, it is necessary to consider the conceptual ideas that drive the over-policing of minority groups.

Proportion (%) of 'foreign nationals' in prisons



Source: Aebi, M.F. et al (2018) 'Foreign offenders in prison and probation in Europe: Trends from 2005 to 2015 (inmates) and situation in 2015 (inmates and probationers)'. University of Lausanne: Council of Europe.