

# ETHNIC AND RACIAL PROFILING IN THE OSCE REGION



**MARCH 22, 2010**

**Briefing of the  
Commission on Security and Cooperation in Europe**

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**Washington: 2014**

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## ABOUT THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

The Helsinki process, formally titled the Conference on Security and Cooperation in Europe, traces its origin to the signing of the Helsinki Final Act in Finland on August 1, 1975, by the leaders of 33 European countries, the United States and Canada. As of January 1, 1995, the Helsinki process was renamed the Organization for Security and Cooperation in Europe (OSCE). The membership of the OSCE has expanded to 56 participating States, reflecting the breakup of the Soviet Union, Czechoslovakia, and Yugoslavia.

The OSCE Secretariat is in Vienna, Austria, where weekly meetings of the participating States' permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations. Periodic consultations are held among Senior Officials, Ministers and Heads of State or Government.

Although the OSCE continues to engage in standard setting in the fields of military security, economic and environmental cooperation, and human rights and humanitarian concerns, the Organization is primarily focused on initiatives designed to prevent, manage and resolve conflict within and among the participating States. The Organization deploys numerous missions and field activities located in Southeastern and Eastern Europe, the Caucasus, and Central Asia. The website of the OSCE is: <[www.osce.org](http://www.osce.org)>.

## ABOUT THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE

The Commission on Security and Cooperation in Europe, also known as the Helsinki Commission, is a U.S. Government agency created in 1976 to monitor and encourage compliance by the participating States with their OSCE commitments, with a particular emphasis on human rights.

The Commission consists of nine members from the United States Senate, nine members from the House of Representatives, and one member each from the Departments of State, Defense and Commerce. The positions of Chair and Co-Chair rotate between the Senate and House every two years, when a new Congress convenes. A professional staff assists the Commissioners in their work.

In fulfilling its mandate, the Commission gathers and disseminates relevant information to the U.S. Congress and the public by convening hearings, issuing reports that reflect the views of Members of the Commission and/or its staff, and providing details about the activities of the Helsinki process and developments in OSCE participating States.

The Commission also contributes to the formulation and execution of U.S. policy regarding the OSCE, including through Member and staff participation on U.S. Delegations to OSCE meetings. Members of the Commission have regular contact with parliamentarians, government officials, representatives of non-governmental organizations, and private individuals from participating States. The website of the Commission is: <[www.csce.gov](http://www.csce.gov)>.

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# ETHNIC AND RACIAL PROFILING IN THE OSCE REGION

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## Commission on Security and Cooperation in Europe Washington, DC

The briefing was held at 2 p.m. in room 201/200, Senate Visitors Center, Washington, DC, Dr. Mischa Thompson, Policy Advisor, Commission on Security and Cooperation in Europe, moderating.

*Panelists present:* Dr. Mischa Thompson, Policy Advisor, Commission on Security and Cooperation in Europe; Rosalind Williams, Plaintiff, *Williams v. Spain*; Rachel Neild, Senior Advisor, Open Society Justice Initiative; and Jamil Dakwar, Director, Human Rights Program, American Civil Liberties Union.

Dr. THOMPSON. Good afternoon. I'm Dr. Mischa Thompson with the U.S. Helsinki Commission. I think as many of you may know, Sunday marked the international day for the elimination of racial discrimination. I'm happy that you're able to join us today to discuss racial and ethnic profiling, an issue that is critical to efforts to eliminate racial discrimination, which is also unfortunately a prevalent issue in the 56 North American and European countries that make up the OSCE region.

Helsinki Commission Chairman Senator Ben Cardin, Co-Chairman Alcee Hastings and other Commissioners began efforts some years ago to combat intolerance and discrimination in the OSCE region. Now, 5 years later, the OSCE has an established tolerance unit that publishes an annual hate crimes report, has three personal representatives to address these issues and has developed numerous initiatives to address prejudice and discrimination.

The issue of racial or ethnic profiling within the OSCE region is one that is common to many OSCE countries and has been raised repeatedly. In particular, the Commission, U.S. Government and organizations such as the American-Arab Anti-Discrimination Committee and Human Rights First have called for a response to the profiling of Roma, Muslims, persons of African descent or Blacks, and other groups in Europe and in the United States, and it's often been raised in the context of combating hate crimes.

The OSCE's High Commissioner on National Minorities has convened experts to discuss the issue of multiethnic policing, which resulted in numerous recommendations, specially, "the experts recommended that measures should be taken to ensure that police enforce the law in an impartial and nondiscriminatory manner, which does not single out any particular group, for example, by engaging in racial profiling." Additionally, the report called for diversity in law enforcement.

Despite these efforts, the issue of profiling is not going away, and one could argue, has become more challenging to address amidst Government efforts to fight terrorism. Today, our panelists will discuss the situation in the United States and Europe, and international approaches for addressing the problem.

I am especially pleased that our guest from Spain, Rosalind Williams, was able to adjust her schedule at the last minute to be here to speak with us about her historic case. I would also like to welcome Rachel Nield, an expert from OSI, who has worked across Europe on this issue; and Jamil Dakwar, who has raised the U.S. case at the United Nations and within the OSCE. Ms. Williams?

Ms. WILLIAMS. Thank you, Dr. Thompson, I welcome this opportunity to share my experience with all that would like to be aware of it. As was pointed out just now, the idea, or the concept of racial profiling rather than decreasing is increasing.

I am a citizen of Spain. I also am a citizen of the United States. Citizen of the United States by birth; I was born in New Orleans. A year-and-a-half age, my parents took me to San Francisco. So I was educated in San Francisco, resided there, went to college there. And through my college in San Francisco, I first went to Spain on a junior year abroad program, and met during that year I was there, a person who was born in Spain, is a Spanish national and White: my husband, whom I married in 1968.

In 1968, prior to going to Spain, I was working in New York at the U.N. for 2 years and decided to return to Spain and established it after we were married at Christmastime as my permanent residence—and at that time, upon marrying a Spanish national, acquired by married Spanish nationality. I mention this because this is important as background for how what I did and am doing was actually carried out.

All right, what exactly happened? What happened was on December 6, 1992, I was traveling with my family—with my husband and my son—to a regional capital, regional city, close to Madrid, 2 hours north of Madrid—Valladolid—by train. As I stepped off the train, I was approached by a gentleman who turned out to be a plainclothes policeman who asked me for my ID.

Now, as a Spanish citizen, as all Spanish citizens, you are required to carry with you at all times your national identification card, which I always have done since 1968. Since I had never, ever been asked for my ID and I noticed that no one else was being asked for their identification, I asked him just very spontaneously, why? At which point, both my husband and I asked him, why? He said, because we're looking for people like her. And we asked him, what do you mean, "Like her?" And my husband said, because of the color of her skin? He said, yes, because there are lots of illegal immigrants like her. At which point—as was asked at our meeting just recently in New York, what was my reaction—my reaction was, I was totally dumbfounded. I was without words.

To make a very long story short, the next day—oh, I must say parenthetically that December 6th is a national holiday in Spain and is called the national day of the constitution. So I filed a complaint the next day with the local police station. And once we were back in Madrid because it was a 4-day weekend, I sought legal assistance because I knew I would have to go to this town perhaps to be in court, et cetera. And what we were looking for was a specialist in constitutional law because what I was questioning was the constitutionality of what had happened to me as a Spanish citizen.

And at the same time, since at that time in 1992, Spain had supposedly the most modern constitution in Europe, I, again, was dumbfounded. I said to myself, how on Earth can a country that has such a modern constitution actually employ racial profiling?

To make a very long story short, the lawyer was not pro bono, as is the case. Such a system does not exist in Spain nor is there a Spanish version at that time of the American Civil Liberties Union—[laughter]—therefore this was an effort which we had to support with personal funds.

All right, so from 1992 to 2001, the case was taken through the Spanish court system. And each time it was rejected, we appealed. So this happened a total of between four and five times, all right.

After it was thrown out, it finally reached a dead end which was called the constitutional court. It was rejected saying, yes, in essence, citizens of Spain could be stopped for their ID based on the color of their skin after 9 years. So I was found—I didn't look for it, but found by two organizations in Spain. One was Women's Link Worldwide, which was working directly with the Open Society Justice Initiative. And through these organizations, the case was taken to the United Nations Human Rights Committee, which ruled after deliberating—it was presented in 2006; the actual case was considered and deliberated 2008, 2009; and a decision was arrived at in July 2009.

All right, the suggestion was that I be offered a public apology on the part of the Government in Spain, that reparation be provided and that measures be taken on the part of the Spanish Government to put in place laws, et cetera, that will prohibit such an incident as I experienced.

I, after that, received invitations on the part of several very high-level authorities to meet with me on a one-on-one basis, expressing their apologies on the part of the Government, expressing an interest in seeing how some reparation could be made, and also expressing the fact that there were certain measures in the form of laws being considered on the drawing board on the part of the Government. Yet, the actual, I would say, suggestions that the Committee had made, put forth, have not fully been met.

I think that's about it in a nutshell. I stayed under the time limit. [Laughter.]

Ms. NEILD. Thank you very much, Mischa. My name is Rachel Neild. I am a Senior Advisor with the equality and citizenship program of the Open Society Justice Initiative.

When we use the term “ethnic profiling,” what we describe is when law enforcement target people because of who they are rather than because of what they have done. This is a form of discrimination that is illegal under international and under European law. It is humiliating and hurtful to the people and to the communities who are thus targeted, but it is also ineffective and even counterproductive law enforcement. It's sparked major riots in a number of European cities. It's clearly eroding trust in law enforcement and alienating communities whose help is much needed both in addressing current terror threats to national security and in generally addressing public safety issues in communities everywhere.

Yet, while we are quite familiar with this issue in the United States and in my original home country, the U.K., in most of continental Europe, the question of law enforcement discrimination or ethnic profiling has gone unrecognized until very recently.

The Open Society Justice Initiative launched our project in this area in 2005 to try to address this gap. And it was indeed Rosalind's case precisely that drew our attention to it, and made us realize that when looked at, there was a lot of evidence but not quan-

titative data and very little research being done to understand the full dimensions and the dynamics of ethnic profiling.

So our project works on three broad strategies. We advocate for new legal standards in policing policies, we conduct research to try to find out what is happening and draw greater public and political awareness to it. And we are also working with police in communities to identify and promote good practices in policing diverse communities where there is interest and the will to collaborate.

Our research has produced some of the first quantitative data on police practices in a number of EU states, and I left some of our reports on the table outside. They're also available on our Web site.

The results where we've been able to generate quantitative data have been the same. Visible ethnic minorities are far more likely to be stopped and questioned by the police. We found rates that range from three times more likely—this is what's called an odds ratio; if you are Roma, Black, Arab, whatever, you were three times more likely to be stopped than any White person—to rates up to 14 times more likely to be stopped. In fact, we did some research in Moscow where the peak disproportionality was 21 more times likely to be stopped if you were, in that case, non-Slav than if you were a Slavic Russian. These are extremely high disproportionality rates; much higher than we see in the United States or the U.K., where the top rate is about 8-to-1.

Yet, where we've been able to get data on the outcome of these police actions, we've only one very, very specific exception: the ethnic minorities who have been no more likely to be detected offending than the majority group. In fact, in a number of cases, the ethnic minority groups are far less likely to be offending than the majority group.

In addition to the pejorative and inaccurate stereotypes about minorities and offending, which underlie the use of this profiling by law enforcement, two further factors today are driving ethnic profiling in the European Union. The first is a reliance on stereotypes about religion and the propensity to violent extremism that underlies many European counterterror practices.

In May last year, we published this report, "Ethnic Profiling in the European Union," which presents evidence of the use of ethnic and religious profiles in a range of counterterror practices by police and intelligence services. We did field research in five countries for this report and used data that was already available in the U.K.

We've identified a range of counterterror powers and tactics where law enforcement is relying on religious stereotypes and stereotypes about national origin more than they are on intelligence. From counterterrorist stops and searches, mass ID checks, raids on Muslim places of business and places of worship to data mining using profiles focused on religious and ethnic criteria to efforts to detect people who may be in the process of radicalization, or that is, becoming the so-called homegrown terrorist.

We found evidence in all of these practices that they relied heavily on stereotypes about religion, about national origin and ethnicity, yet we found no evidence that these practices had helped to detect terrorists.

Indeed, what is worrying and analytically I think kind of speaks for itself is the evidence that profiles, because they are predictable, are open to evasion and substitution. When we look today at this country and others, Jose Padilla, Richard Reid and now Jihad Jane are the manifestations of this possibility of evasion or substitution. People of different origin and appearance can simply be substituted for those who fit the profile. To

be effective, both ordinary policing and counterterrorism must be based on solid intelligence and not on prejudice.

The second factor driving ethnic profiling in Europe that has increased in recent years is the aggressive enforcement of immigration controls. In some cases, politicians have actually set numeric targets for police to stop and search people, detain them and deport them. Unsurprisingly, the police response to this is to go out and stop and search visible minorities. Indeed, it's hard to imagine what else they would do in response to such targets.

In a Europe that is rapidly becoming increasingly diverse with second and third-generation native-born peoples of immigrant origin, these policies are driven by outdated assumptions about ethnicity and nationality, and they impose a deeply unfair burden on those second and third generations, and indeed, on all legal immigrants into the EU.

I will end—as we've been asked to be very brief and allow time for questions—[laughter]—by noting that although this is a disturbing picture, there has been increasing recognition of the issue amongst European nondiscrimination bodies and also to some degree, I don't want to overstate, but within police forces.

In our project, we focus not just on the research and litigation, but as I now said, have been working to identify and promote stronger norms and good practice in law enforcement. We've had partnerships with a number of law enforcement agencies and undertaken local pilot projects, and we were very pleased.

We had particular success in one area, which clearly demonstrated that you can in fact address ethnic profiling in a manner that reduces disproportionate stops of ethnic minorities, but at the same time, increases the efficiency with which police use their powers. Basically, in this area, the hit rate on police stop-and-search—that is, the number of times they detected an offense—went up three times because they were thinking about who they were stopping and why, and not using stereotypes.

So I will just wrap up by saying I think that much remains to be done. We need to still gain far greater recognition of the issue, we need to strengthen legal norms prohibiting discrimination in law enforcement and we need to broaden the knowledge and adoption of good practices. But we're continuing to work in this area, we're finding more and more partners and resonance on the ground in different European countries. And I look forward to answering any questions that you have on any of these topics. Thank you.

Mr. DAKWAR. Let me first thank Mischa and the Commission. The Helsinki Commission has been instrumental in putting a spotlight on human rights violations in the United States, as well as abroad, and more importantly, connecting the dots between the different global trends in the OSCE region, including the United States and Canada as the two members outside the European continent. So I really would like to say thank you for the efforts, particularly around the role that the Helsinki Commission played around the U.S. review before the CERD Committee—the Committee on the Elimination of Racial Discrimination.

The Helsinki Commission has issued a statement at a time when the Committee made the recommendations, and also later on, sponsored a resolution that was very important to provide support for the International Convention on the Elimination of All Forms of Racial Discrimination.

It's also important that the timing coincides with the International Day Against Racial Discrimination. And 50 years ago, with the Sharpeville Massacre, which basically

is the reason why the world every year on the 21st commemorates or remembers this day as the International Day Against Racial Discrimination. But 66 people were killed and hundreds were injured when the South African apartheid regime cracked down on peaceful protest at the time.

So I think it does have this important context in how this massacre and gross violations of human rights in that context leads us to think about how do we continue to improve the situation while we know that much has happened since then, both in South Africa and in the United States, but we have to think of how much we have to go further in promoting human rights and ending racial discrimination.

The historic fight against racial discrimination and racial bias in the United States continues and has perhaps become more challenging in the 21st Century. Although fewer de jure forms of discrimination remain in existence, de facto racial disparities continue to plague the United States and curtail the enjoyment of fundamental human rights by millions of people who belong to racial and ethnic minorities.

Policies and practices that appear race neutral, but disproportionately restrict the rights of freedom of people of color are difficult to challenge, and establishing their discriminatory nature in the public consciousness and among policymakers is an uphill battle. Racial profiling by law enforcement and the correlating criminalizing of people of color provide one such example. Despite overwhelming evidence of its existence, often supported by official data, racial profiling continues to be prevalent and an egregious form of discrimination in the United States.

Both the Democratic and Republican administrations have acknowledged that racial profiling is unconstitutional, socially corrupting and counterproductive. Yet this unjustifiable practice remains a stain on American democracy and an affront to the promise of racial equality.

Since September 11, 2001, new forms of racial profiling have affected a growing number of people of color in the United States, including members of Muslim, Arab, and South Asian communities. The Obama administration has inherited a shameful legacy of racial profiling, codified in official FBI guidelines in a notorious registration program that treats Arabs and Muslims as suspects and denies them the equal protection of the law, and even the presumption of innocence in the United States.

As noted by Representative John Conyers, "Since September 11th, our Nation has engaged in a policy of institutionalized racial and ethnic profiling. If Dr. Martin Luther King were alive today, he would tell us we must not allow the horrific acts of terror our Nation has endured to slowly and subversively destroy the foundation of our democracy."

Equally troubling has been the Federal Government's encouragement of unprecedented raids of immigrants, particularly Latino communities and workplaces, by local law enforcement in cooperation with Federal agencies. These policies have unjustly expanded the purview of an undermined basic trust in local enforcement, alienated immigrant communities and created an atmosphere of fear.

According to recent reports by the Leadership Conference on Civil and Human Rights and the Southern Poverty Law Center, inflammatory anti-immigrant rhetoric has led to a dramatic increase in hate crimes against and racial profiling of Latinos.

The report that the ACLU and Rights Working Group released last summer analyzed the prevalence of racial and ethnic profiling on the Federal, State and local levels. The

report found that racial profiling constitutes one of today's most significant challenges to equality.

While the U.S. Constitution prohibits racial profiling and the international community has defined racial profiling as a violation of human rights, profiling continues to impact millions of people in the African-American, Asian, Latino, South Asian, Arab and Muslim communities.

All over the country, racial and ethnic minorities very often are investigated, stopped, frisked or searched based exclusively upon who they are and what they look like or what faith they practice without any identifiable evidence of illegal activity. The disproportionate rates at which racial minorities are stopped and searched, in addition to the often high concentrations of law enforcement in minority communities continues to have a tremendous impact on overrepresentation of minorities in the American criminal justice system.

The report was submitted to the U.N. Committee on the Elimination of Racial Discrimination as part of the followup process to the Committee review of the U.S. progress—or, U.S. implementation and compliance with the International Convention on the Elimination of all forms of Racial Discrimination. Unfortunately, the report represents only the tip of the iceberg, and a variety of additional examples of the widespread nature of racial profiling no doubt exists.

Last fall, in response to the report that we submitted and in response to the followup report that was submitted by the Bush administration literally in the last days of the Bush administration, the U.N. Racial Discrimination Committee sent a letter to the Obama administration expressing concern about the U.S. Government's lack of progress in addressing racial discrimination. The Committee urged the United States to pass legislation prohibiting racial profiling and to end immigration programs that foster profiling. The Committee's observations are still being studied by the Obama administration and no response was submitted to the Committee.

As an Illinois State Senator, President Obama broadly championed State legislation to end racial profiling. And as a U.S. Senator, he cosponsored the End Racial Profiling Act, which was first introduced in 1998. He appointed Attorney General Eric Holder to head the Justice Department, and Attorney General Holder has stated that racial profiling is not good law enforcement—and he said that his Justice Department is committed to combating the practice of racial profiling.

While the Obama administration has taken some steps to address racial profiling, such as an opening investigation into the anti-immigrant practices of Arizona's Sheriff Arpaio, harmful policies from the previous administration still persist.

For example, the Obama administration is continuing the Bush policy of allowing the Federal Government to aggressively transfer substantial responsibility of civil immigration laws to State and local enforcement, resulting in the increased profiling of people of color suspected of being undocumented immigrants.

Most notorious among these initiatives is the 287(g) program, which has been criticized for encouraging the harassment of both immigrants and U.S. citizens, particularly in Latino communities, furthering the marginalization of already-vulnerable populations.

Moreover, in the wake of recent events, such as the Fort Hood shootings and attacks and the failed Christmas Day bombing attempt, some have placed fear and bigotry over due process and basic human rights.

Earlier this year, the Obama administration announced that citizens from 14 nations, almost all predominantly Muslim countries with the exception of Cuba, will be subject to increased scrutiny and security measures. These measures will not make us safer and will only serve to further stigmatize broad groups of people.

The report, which includes very detailed recommendations, calls for national legislation to end racial profiling, particularly with an emphasis on covering all kinds of profiling, and with no exception that would allow the Government to use them in order to profile people based on stereotyping.

The report also comes up with a recommendation to review all policies and programs, and to replace them with more effective and fair policies that prohibit the use of race, or national origin or religious affiliation in the practice of racial profiling. And it also calls for the suspension and end of the anti-immigrant enforcement programs such as 287(g).

The report also includes an important recommendation that deals with transforming the Civil Rights Commission into a civil and human rights Commission that will be able to monitor effectively human rights violations, particularly a practice like racial profiling.

It also includes recommendations about anti-profiling trainings that are lacking in the law enforcement agencies, to bolster oversight and transparent complaint procedures, and more importantly, to end some of the—or to revisit some of the guidelines that have been issued by the former administration, including the Justice Department guidelines on the use of race in law enforcement agencies. Thank you.

Dr. THOMPSON. Thank you. And actually, we're going to begin, in a sense, the Q&A and discussion part of this briefing. As the moderator, I think I'll take the privilege of asking some of the first questions.

I actually wanted to start with Mrs. Williams in really asking for over a decade, in which you've, I think, been waiting for this situation to be addressed, what has been the response of the Spanish public? And I think, also, how have things either changed or not changed in specific regards to profiling in Spain?

And I'll preface that by saying that I visited Spain a couple of years ago now and actually spoke with a few NGOs that were charged with responding to persons who experienced racism, or hate crimes, et cetera; and the one thing that I was actually told during that time is, often times, people didn't actually report incidents of discrimination—so whether it was housing, some type of violent hate crime that was committed against them, et cetera—and part of the reason was, they were afraid to actually go to the police to say anything, and it was in a direct relation to being racially profiled. And in some cases because people were undocumented migrants, they actually thought that they might then be arrested, or something of that nature.

Ms. WILLIAMS. I think the first thing we should actually point out is that, No. 1, to answer the second part of your question first, there has been an increase. In the last 17 years, or 18, almost, since I began this case until now, there has been an increase in racial profiling throughout the country. Not only in Madrid, not only in Valladolid where this happened to me, but in other areas of the country.

Now, there has been an increase also in the multicultural aspect, the multiethnic aspect of the Spanish population. So in essence, there has been an increase in illegal aliens and illegal immigration. Nonetheless, as Rachel has pointed out, racial profiling does not solve the problem. You cannot find certain, say, segments of society through racial profiling.

In my case, most people in Spain, more or less, as I mentioned earlier, I was received and requested to meet one-on-one with high-level officials. And high-level meant the Minister of Foreign Affairs and Cooperation; the second in charge of the Ministry of the Interior, which is equivalent here to Homeland Security; and I received a letter from the Minister of Interior.

In all three cases, there was an expression of an apology on the part of the Government, in the name of the Government. In all cases, I think all of them—well, I didn't meet with the Minister of the Interior—but with the Minister of Foreign Affairs and Cooperation, and the person in charge of U.N. Affairs, Director-General of U.N. Affairs for the Ministry of Foreign Affairs, was more or less—they were all surprised at my perseverance; more or less surprised that we would proceed to do this for as long as it happened.

I think the most important thing, as you mentioned, in Spain, people do not really understand their privilege as a citizen of a democratic society, nor their responsibility. Now, at one point, one attorney who's a specialist in constitutional law—pointed out to me—he said, this happened to you in Spain as a Spanish citizen, but you're proceeding to fight it as an American.

Now, I think most people either give up because it is laborious, or it's unpleasant, the actual incident was humiliating. No. 2, you really don't know what to do. So in my case, I was actually able to ask a friend of mine who was a journalist, American Bureau Chief for Associated Press. When I told her what had happened, she suggested I go to a journalist in the area where the incident happened, who was a colleague of hers.

This particular gentleman suggested that I go to the police station and file a complaint. When we went to the police station, the policeman who was in charge of taking complaints would not take it—would not take it. And at one point in time—as I mentioned to you earlier, my husband is Spanish, from Spain, and I never call him darling, even though he is—I turned to him, and I said the Spanish equivalent, well, darling, I guess we have to go and have lunch, and come back with a notary public to file a lawsuit. Because I knew according to Spanish law you can file a complaint, and as long as it's notarized, it's a legal document.

So to answer your question—I'm doing it in a roundabout way—most people give up, most people don't know what they can do and most people are afraid. Now, this is another—you might have seen in our bios—in my case I'm an artist—a practicing artist—and curator of photography. Therefore I work for myself. I don't have to worry about maybe being fired from my job, or not being hired, or people in, say, a coffee shop at work not wanting to sit next to me and eat with me. So in reality, I'm more or less a free spirit, right?

I've lived in Spain for 40 years. I've lived there under Franco. Spain is a very new—it's only been a democracy a little bit more than 30 years—in this recent epoch of democracy for only 30 years. Therefore I felt that it was my duty and my privilege to be able to at least try to see if what had happened to me could more or less be at least fought. Does that answer your question?

Dr. THOMPSON. You actually make me want to hear more. [Laughter.] But actually, I think we'll go on to Ms. Neild for just a second and raise the question of what similarities and differences you have found between looking at Spain and other countries within Europe. First, this idea of if this happens to someone, how it is they even report the issue—you know, at the local level, and then, if you need to use the courts, how that actu-

ally works and so forth. And I think later we can get a little bit more into specifically what you've done in terms of training and some other things.

Ms. NEILD. Sure. I think one of the things to think about looking at these issues in Europe is the nature of migration. So you have some countries like France, England to a degree, the Netherlands and Germany that have had fairly large-scale migration for quite some time. There are some important differences between them in terms of how they nationalize people. Then you have other countries, and Spain and Italy really stand out at the moment, who have been historically net-sending countries, not receiving, but in the last 10 years, being on the Mediterranean coast and part of the EU, have really faced a massive influx, as Rosalind mentioned.

And the numbers are quite staggering, actually. Frankly, I don't actually recall them at the moment. It's like 5 million people who've gone to Spain in the last decade. Some are going home now, but Spain has come from being a very homogenous country, to a very multiethnic country, at least in the large urban centers.

And the response to this, unfortunately, and not entirely surprisingly, has been to some degree, racism and xenophobia, and really deeply ingrained prejudice in law enforcement. You hear a lot—oh, all of the crime is committed by immigrants. Well, there was actually crime in Spain before immigrants arrived, surprisingly enough—[laughter]—and it was in Spain where our data found much lower offending rates, actually, amongst migrants than the Spanish national population.

The current situation has, as Rosalind notes, gotten considerably worse because of the economic crisis. Spain's doing quite badly. But it's really—but also because Zapatero, the President of Spain, had a fairly positive immigration policy, and actually opened nationalization to many people, faced a very strong political backlash against that and has now clamped down. So in Spain they're actually calling on the police to round people up.

However, they're also doing this in France, where you don't have a massive wave of recent migration, where you've got a very longstanding multiethnic society and a very deeply held notion about Frenchness that includes the overseas territories, as they call it. They're also, with the right-wing Government this time, there are numeric targets to round up immigrants.

So while there are sorts of national distinctions, there's a broader dynamic of law enforcement discrimination driven by the three factors I mentioned: the stereotypes about who commits crime, anti-immigration and now counterterrorism.

And you see the responses to this. We were probably most aware of the riots in France in November 2005. But these have actually—we don't see it in our press because they're not necessarily quite as big—but there are public disturbances in cities, in inner-city areas, going on all across Europe.

In Denmark, in a neighborhood in Copenhagen, just over a year ago there were riots with cars set on fire provoked by the police stopping and handcuffing an elderly Pakistani gentleman. I was just in Belgium, and the Belgian police were describing areas of Brussels—no, don't laugh—as no-go areas for the police. And you hear this a great deal in countries all over the EU.

Dr. THOMPSON. OK. Actually, I'll just let you comment because I really had this feeling, as she was talking, that you were also visualizing some of your cases in cities, and so I'll let you respond. And then I think we'll go ahead and open it up to the audience.

Mr. DAKWAR. Sure, and I also want to acknowledge my colleague, Jumana Musa, who's sitting here from the Rights Working Group that we worked together on, putting together a report. Obviously, what we are seeing—and it's also a lot of information that was gathered by local organizations working on the state level—that this phenomenon of targeting and profiling immigrants, migrants, because they appear different—brown people, Black people, of course—that is something that is prevalent and is actually something that's happening across the board.

And what we have been raising concerns about are those kinds of programs where you have the national, Federal Government providing and deputizing local enforcement to engage in those sorts of policies of enforcing civil immigration laws; that historically has not been the traditional role of local law enforcement.

So instead of maintaining the trust between communities at the local and state level, which is imperative and important for any successful law enforcement in the challenges of all kinds of crimes, and so on, you're having diverted resources to actually breaching this kind of trust. And you're seeing that there are people who are being set in a moment of siege. And I think a lot of people—thousands who demonstrated yesterday—have also sent that kind of message.

It is also a matter of what's the national—what is the Federal Government doing about that? And I think, as I said in my opening remarks, we have heard that this administration, the Obama administration, is very committed to fighting racial discrimination, and racial profiling in particular. We have seen two investigations launched in particular, looking at racial profiling—the Sheriff Arpaio in Arizona, and the East Haven, another investigation that was opened in December of last year.

But yet, we have not seen the kinds of comprehensive review and revisiting the previous administration's policies, and particularly, allowing law enforcement to use race and national origin in conducting their work. For example, the FBI guidelines from 2003—sorry, the Justice Department guidelines from 2003 that specifically addressed the issue of the use of race by law-enforcement agencies have many loopholes. And that actually carved out some sort of an exception for the use of racial profiling.

For example, national origin, religious appearance or religious background would not be part of the prohibited basis for conducting law-enforcement work. It does not apply to local law enforcement. It doesn't have an enforcement mechanism. It doesn't have the enforceability in terms of knowing that the agencies or the officers who would be violating that will actually be punished for engaging in racial profiling.

And then you have the more recent policies, particularly the FBI guidelines that were issued by former Attorney General Mukasey, which clearly gave the FBI kind of an authority to use race as long as it is not the only factor. Of course, race will not be the only factor in most of them, if not 99 percent of the times. So as long as race and national origin is not the only factor, that was given as a matter of an authority. So we are still hoping that the Obama administration and the attorney general will revisit those guidelines, and we know that there is a task force that is reviewing the DOJ, Department of Justice guidelines from 2003.

Unfortunately, this process hasn't been as meaningful and transparent as we would like it to be, to allow input from civil society, from NGOs, from all sorts of groups, based on the experience that we have over the last 7 to 8 years. But clearly we are seeing some movement; it's not the movement that we would like to see in putting behind those kinds

of policies that really were counterproductive to what the administration wanted to achieve.

And certainly the failed attack on Christmas Day had all those kinds of examples of showing that this is a case where it was not about profiling and stereotyping the entire community, whether people coming from Nigeria, or Muslims, or Arabs, but rather, looking at the individual behavior, and really engaging in old-fashioned policing work: Look at the criminal behavior; let's see whether there are any suspicions there of any wrongdoing. But rather than sticking a profile to the entire community, whether people coming from a particular country—and then you have those situations where, now, organizations are evading those kinds of profiling.

And you heard the Jihad Jane, or Jane Jihad example—even women who are White, not appearing in any way suspicious to law enforcement, have been involved in all sorts of things. So I think we have to look at those things in context, and I truly was thinking about all those examples when I read and when I heard the summary of the report—the OSI report.

Dr. THOMPSON. I'll say, if anyone wants to ask questions, you can use this microphone here. I'm actually going to bend it around and you can come to the front. And just to allow people to have time to come to the front, I'll also ask Ms. Neild. You, I think, also mentioned in your recommendations in the report to focus on behavior, actually, as a mechanism for trying to find persons who may be a potential terrorist or committing crimes. And I was hoping you could talk a little bit about that and actually how or if that recommendation is being used in the countries that you've worked in.

Ms. NEILD. We specifically call for a reliance on intelligence—both counterterrorism and policing, and in immigration, that good intelligence is the basis to identify behaviors that give grounds for reasonable suspicion that someone's actually done something.

I think I mentioned very briefly in my opening remarks that we did have one exception where we found a minority group that was offending at a greater rate. It was in the city of Girona in Catalonia, where we were working with the police to introduce stop forms.

And the one group we found with a higher offending rate of the minority groups we were monitoring was Roma women—Romanian, actually. What was happening was there was a lot of shoplifting going on in a certain downtown area, the downtown area with lots of shops. And they had a pattern where in the afternoon women would go in these shops with large shopping bags lined with aluminum foil to evade the metal detectors.

And so the police were going in, and they would stop in and search—and women they found with long shopping bags, which looked like they met this criterion. Sadly, this appeared to have some ethnic degree of socialization, and they stopped a lot of Romanian women doing it. But what was interesting to me about that one was if you interrogated why the stop was happening and what was going on, it wasn't per se because they were Romanian, it was because they were in a time, a place, based on a crime pattern in that time and place. And I think when we look at effective policing, that is what you're going to see.

The problem is a lot of policing isn't actually necessarily done to catch people doing wrong things. It's done to impose control on populations. It's done to maintain a certain form of social order and it's done to exert power. And to swap countries, I think that's what we see happening a lot.

In France at the moment, there is a huge problem around Paris in the outlying areas with youth. Their unemployment rates are far, far higher. They're stuck in these, sort of, basically ghettos. And there is just an appalling level of confrontation right now going on with the police. And it really needs addressing because using aggressive stop and search to say we're in control is simply, sort of, throwing matches into a tinderbox, frankly. Really they need—they need decent jobs and they need education, but they also need the police to back off and to stop socializing more broadly this attitude that they're all potential criminals and about to do something.

On the behavior—so I'm a little bit cautious with the idea of behavioral profiling because I think it's something where most of us are not clear as to what we're talking about. There is a lot of interest in behavioral profiling and there's a lot of marketing of behavioral profiling, a great deal of it coming out of Israel.

Some of it is quite interesting. I actually was invited to observe a training in Schiphol airport—not in the airport where Abdulmutallab went through because he was in transit but in the area that surrounds Schiphol airport, there's a train station. You can go right from the train station into the planes and that area is patrolled by the Dutch military police.

And an Israeli private company was training them in behavioral profiling and we watched them for half a day and it was actually—it was fascinating. They asked me not to talk publicly in a lot of detail about what they were doing, but it really was very interesting and was very behaviorally focused. It was about looking for people who weren't following normal patterns.

That said, there's other people who are out there talking about behavioral profiling and then they put these indicators and they're things like wearing a heavy overcoat when it's too hot, mumbling, wearing rosewater. For what you see is a lot of what these supposed behaviors are, are in fact proxies for religion. And it's not about behavior at all. It's another religious stereotype.

So I think that before one sort of endorses behavioral profiling as somehow being better than ethnic or religious profiling, you need to know what the actual practice is and what the outcomes that it's producing are, and be clear on that.

Dr. THOMPSON. OK. And we have a question coming from the audience.

[Off-side conversation.]

*Question:* First, I apologize; I came in late and so I didn't hear Ms. Rosalind's presentation. I just wanted to followup on Dr. Thompson's first question. How has the Government of Spain implemented the decision of the Human Rights Committee that they made—that the Committee made in 2009? What are they doing? What's their reaction?

Ms. WILLIAMS. Well, the reaction, I—the reaction has been that, as I mentioned, there were one-on-one meetings. In other words, to use my words, I—not publicly but in these private meetings, expressed my gratitude for solidarity. But I made a point of pointing out that in essence, the Human Rights Committee of the United Nations suggested that I be advanced—I be given a public apology.

Why? A public apology is an expression on the part of the Government that they are not in favor of this. This has not happened. I have not received a public apology. There has been expression on the part of the Minister of Foreign Affairs in cooperation to see—to investigate reparations. Nothing has happened really.

And from the point of view of law, there are two laws now that will be—that are on the drawing board, that have been presented—two new laws that have been presented to the council of ministers. This was told to me by—in a, again, a one-on-one private meeting with the second in charge of the Ministry of the Interior, Homeland Security.

And those laws in reality are—they could be effective, but it might take 4 or 5 years—if they manage because they have to go through a certain bureaucratic process and be presented to the equivalent of Congress—in other words, the Parliament. And they have to pass. So it's a nice gesture. There have been some very significant gestures, but in my opinion, nothing has really been concrete. In other words, we haven't arrived at closure according to what the Committee has suggested. Rachel, you can help me or you think you agree with what I'm more or less saying?

So I think perhaps it was a very heady experience on my part. But at the same time, I was told that—by the person in charge in the—of U.N. Affairs within the Ministry of Foreign Affairs that he had gone as far as he could go and that I did receive the letter, which in essence was a two-page, very—very, very cordial, very polite letter from the Minister of the Interior with very explicit explanations of what the Spanish Government is doing.

And I was told I could do whatever I would like with that letter. In other words, I could have a press conference that mentioned that. But as far as I'm concerned, I'm not in Spain to do the homework. This is the Government of Spain. I'm the citizen. Defending—asking the Government to defend my rights as a citizen. And as far as I'm concerned, right now, that has not been done.

*Question:* I guess mine is a half comment/half question for comment. I mean, I think one of the things as you talk about the Obama administration's policy, and our issue is that the Obama administration's actions actually allow for so many of these programs that—these Federal programs that are encouraging racial profiling because the guidance, as you mentioned, does not include profiling based on religion, based on national origin and then has large exemptions for borders and national security.

So that in many ways, those exceptions sort of swallow up the rule and allow programs that use state and local enforcement in immigration. They allow things like the TSA policy that targeted everyone with a turban, which has now turned into a bulky clothing policy which targets everyone with a turban and other religious clothing and things like that.

And so I think—you know, and then you have the FBI guidelines which don't even meet the very low bar of the DOJ guidance in terms of protections. And those are all things that are currently in place and not—at least the FBI guidelines—actively being looked at for change.

And so we find that extremely problematic, but what I would like to get some discussion on is some of the discourse we've seen recently by the Government when you get to things like behavioral profiling and things like that is who it applies to. And I say that because in terms of where many of these things come in, when you start to criminalize immigrants and you start to talk terrorism—and we saw recently the man who flew the plane into the IRS building copied that and you know, saying that violence is the only answer and was politically motivated. We saw the man who went to the Pentagon and shot a couple of the guards and they were both treated as not terrorism; that this was

somebody who was an isolated actor, they were—I don't know, mentally ill; all the list of things that were not terrorism.

And so what that appears on its face is that the definition of terrorism then is no longer about the act, but it's about the actor. And so I would love it if you could sort of encounter that and how the, sort of, criminal and terrorism narratives plays into who the actor is when acts get described and how that then sort of affects the larger question.

Mr. DAKWAR. I think in this debate and this discussion about what is permissible law enforcement action and what is not, I mean, there is also the politics of this issue that influences everything that happens. And when you start to see people taking it into the realm of fear-mongering, this is when it becomes really much more difficult to conduct constructive and open debate and discussion about what is permissible and what is not permissible.

Just to give an example of how that is really kind of the—when you have a certain enemy—concrete enemy that you are fighting, it becomes—that's the argument, well, it becomes a little easier to tackle or to deal with. When you don't have a specified enemy, then it becomes a lot more difficult. It will be isolated, individual cases.

And that is why we see it in a lot of—it's easier for—you know, in many ways, it's not only a U.S. space; it's something that happens in many other countries—is to stereotype and to categorize and stigmatize and victimize one large group of people rather than doing the more difficult but more effective way of looking at—and when I say individual behavior, not looking at behavioral profiling, but I was more alluding to looking at individualized kinds of suspicions, rather than group-based suspicions, based on cultural appearances, cultural traditions or behaviors and so on.

So I think that that's what it's really getting us to, which is that you have the easiest way to react to those kinds of actions, saying, look, it's all the people who would practice religion would likely to commit an act of terror or act of violence. And so instead of really focusing on those small group of individuals that may have the potential of doing that, let's just go and against the entire group of people who practice religion or practice Islam and, for that matter, they are the ones who are the enemy and potentially the ones who are going to do that.

And so they have—you have really entered into a realm which is very dangerous in labeling people and putting borders around them, alienating them, making them feel that they are not trusted, no matter what. Whether you are a citizen or not citizen, you are White or Black, your religious affiliation would make—will speak on your behalf and you don't have even the presumption of innocence at any state of the law. So that's one of the things that—it's in the act.

The other thing is that the vagueness of the policies when you have, you know, what's the definition of terrorism. I'm sure many of you have looked at that in different directions. You have—you know, when you create a certain broad definition of what is terrorism, what is not terrorism and how does that fit into people's action. It creates another layer, so it's easier to paint in a broad brush the entire population rather than specifically addressing the—again, on individual level those kinds of suspicions.

The FBI guidelines that Joanna mentioned briefly, have a problem as they do create a space for FBI agents to take into account things that are really based on stereotype and stereotypes. That is including some of the cultural things, looking at the domain—you need to know your domain—and those kinds of things.

This is something that does not necessarily make for effective law enforcement and intelligence gathering, because in a lot of the situations, you will end up getting bad intelligence if you are going after the group. You are not getting any kind of cooperation between the communities that are vulnerable and they will see—they will feel that they are under siege. So it is counterproductive in many ways.

And it also works—ends up playing into the hands of those who are aiming to inflict fear and terrorism among societies and communities when they see that there is already a disconnection and there's no trust between the communities and the Government that is supposed to be able to treat them equally and without discrimination.

Ms. NEILD. I think this is one thing where—one level and sort of some of the political rhetoric some EU countries are a little bad at and it's actually because they've had a lot longer experience of domestic terrorism. So you've had red terrorism in Italy and Germany. You've had Basque ETA ongoing issues. You've got the Corsicans, there's the Irish, there are violent right-wing neo-Nazi groups. There are some strange and quite violent animal activists.

And there's a certain amount of rhetoric and I'll use the term rhetoric advisedly, I think, but sort of, saying, no, no, we talk about violent extremists; we don't talk about Muslim terrorists. That said, however, when one goes in and looks at the thrust of policies and looks at a lot of the new initiatives that are being undertaken, they are very clearly and strongly targeting Muslims.

If you look at the actual number of acts of terrorism—and Europol does an annual report which details attempts and acts—there are hundreds every year. And almost none of them are Muslim, are Jihad—shouldn't the use word Jihad—are al-Qaida-inspired, I would say. But there is—and again, of course, because Europe has got a large Muslim community—Muslim communities, many. It's the fastest growing religion in Europe. There is a great deal of concern about this idea of the homegrown terrorists.

And the Dutch, because of Theo van Gogh being killed by Mohammed Bouyeri, started very early on with this idea that you could somehow identify people in this process of radicalization. We describe some of their policies in this book. They came up with these criteria, which include things very similar to the “behavioral profiling,” but—people suddenly growing beards or refusing to shake hands with women, and so on and calling on all sorts of social services to report people where they saw these behaviors going on to the authorities to then intervene. They weren't necessarily immediately arrested; they were sometimes offered counseling and other things, but it's just so obviously targeting certain visible manifestations of religious practice.

And just for starters, this is wrong. They haven't caught anyone through any of these things and if you look at what's going on in Europe, you see a large number of White converts involved in those very few acts that have taken place. But there's an interesting study also in a Dutch institute which said, well, you know, we've looked at—identified terrorists—I think they had something like 260 different individuals who'd been under suspicion or arrested—I'm not sure what the threshold criteria was to include them—and he said, yes, there's a profile. It's so big it includes half the Muslim men in Europe. This is completely useless for law enforcement. You are going to waste a vast amount of time and resources that you ought to be using to try to really identify the genuine threats against us. One critical way—probably the most critical way you identify those genuine threats—is by working with communities. But that does not mean instrumentalizing those communities and simply seeing them as informants to the police.

And this is another one of the problems I think with the initiatives that are going now. A lot of Muslim communities, like the South Asian community that has traditionally had lower offending rates. They've been very, you know, hard-working, good citizens, da-di-da. Now, suddenly the police are fascinated by South Asian, especially Pakistani-origin citizens in the U.K. and they're running in and there's a huge program called "Prevent." It's offering money for different kinds of programs. These communities know exactly why that's all there and going on. And it's a very one-sided dialogue.

And although not all of it is necessarily intentionally or money for after-school programs for kids—that's fine. But it's not being done on the basis of a conversation about who gets it, what gets done and why suddenly are Muslims—and just we Muslims in this community—getting it. And that can be deeply divisive within local communities in different places. So I really think that in the United States there's a growing concern going on here now in the wake of Fort Hood and Jihad Jane.

So it's an important time to look at some of these dynamics and some of these discussions coming out of Europe and try to learn some of the lessons and not make the same mistakes. I'm not, frankly, enormously optimistic about that. The NYPD has already put out a big report on radicalization, which is not good. I believe the LAPD proposed to map potential radicalization, which basically meant mapping every mosque and where the Muslims lived. That's not the right approach.

There needs to be some frankness and some honesty and law enforcement. I think, in these dialogues, if they're going to be good dialogues and they're going to really build trust, have to be willing to hear criticism. You can't just go in and expect people to inform on you when that community feels victimized or feels that they're being pointed at as the threat to society when they actually have been living, suffering the impact of a lot of this targeting. So I think there needs to be some room for a little cathartic outlet in order to get working.

But it does work. I mean, we've talked to communities and we've talked to police in areas where they've really engaged with this, and information is given. You won't know about it publicly, because it's still really difficult, within a community, to inform on other community members. It's difficult in any community. It's nothing to do with your religion. So on the whole, that's not going to go public unless it has to in a court trial, but information is given, and it's invaluable and we need it. And we need to create the environment that facilitates it.

Dr. THOMPSON. I was hoping that each of you could briefly, I think, just speak to the issue of—the role that you feel that international courts and organizations actually play in this process. I find it quite interesting, Ms. Williams, that you, in a sense, didn't give up when you received repeated innocence feedback, that your claim was—that innocence was justified within Spain.

And I also find it interesting that Rachel, and Jamil as well, that you all have attempted to access different international organizations, whether it's the EU, whether it's the United Nations, whether it's the OSCE, et cetera. What is it you feel that you're able to gain within these international spaces and how you do feel that translates back to the specific countries that you're working in? And if we start with Ms. Williams, that will—

Ms. WILLIAMS. I think the most important thing is communication, on one level—communication among the different organizations that are dealing with this type of situation. And in our case, in Spain, we did receive ample coverage in the media. In other

words, there were front-page articles in the Spain's most important newspaper on more than one occasion, television coverage with interviews, et cetera, on a national level, et cetera—television and radio.

That's one thing I think should be done. Another—and we haven't been able to do it yet—is to advance more to opinion—in other words, in more or less mass-distributed forums, magazines, et cetera, that there could be actual in-depth articles that do explain what is happening in different areas of the world, as well as on both sides of the Atlantic, for example.

Another thing that I mentioned the other day, when we had a similar meeting in New York at Open Society was the importance of education, from my point of view as a citizen. I'm not an expert, as my two colleagues are here, but as a citizen, I do believe that it's very important for students, and starting with children through teenagers through university, to actually know, learn—in this case, in Spain for example, because that's my only experience, to understand the constitution, what it means, what their privileges are and what their rights are, and what their responsibilities are. I think that is very, very important at all levels and constantly.

Mr. DAKWAR. As a major civil liberties and legal organization in the United States, the ACLU has always looked at international forums as complementary forums or places to raise some of these things that we deeply believe in and concerned about policies. Of course, we would, first and foremost, pursue the domestic, national forums, whether the judicial, whether—most of the time, litigate—but we also realize that there are certain areas where you don't have much success in getting a remedy or recourse for—to change policy.

So we do, of course, engage in the other traditional ways of advocacy—legislative advocacy and otherwise. But it's also—we thought that there's also a benefit in using international forums, and in using international human rights framework, in particular, to engage the Government—U.S. Government on a lot of the issues where we were not successful on a domestic level.

So we have been using the Inter-American Commission on Human Rights to bring petitions, based on behalf of individuals, where we exhausted domestic remedies—where the Supreme Court either rejected our lawsuit or our appeal. Or, for example, on behalf of Khalid El-Masri—a German national who was victim of rendition program—he filed a lawsuit against the CIA.

That lawsuit was dismissed by the lower courts and the Supreme Court did not grant an appeal. And therefore, the only place for him to get his day in court, to get himself heard by some sort of a forum was the Inter-American Commission of Human Rights. Where the U.S. engages, you know, you'd be able to bring that same similar arguments that you made, but with sometimes a more advantageous forum, because international forums have developed based on the national domestic experiences of different democracies, different legal regimes.

So we do use that as an effective way to inform U.S. Government policies on a number of areas where U.S. law is out of step with the world, or behind in terms of providing access to justice, providing legal remedy or protecting rights and, both social/economic, as well as civil/political rights. And so we have used international bodies like the United Nations human rights mechanisms when the use was reviewed by those Commit-

tees to assess progress that was made under the international human rights treaties that were ratified by the United States.

So there is a level of commitment—not necessarily always legal commitment, legal obligation—but a sense of political, moral obligation to heed or to hear the recommendations and to take them into consideration. And racial profiling certainly is one of those issues that we felt strongly that, bringing them to international forum would only benefit—we would only benefit and the U.S. Government would only engage and use that as a way to see what’s happening in other countries in Europe, in the OSCE region, what’s happening in the Latin American and the Inter-American system.

And that, in itself, I think, was helpful, both on the human level for individual victims of human rights violations, but also on the broader level of policymaking and changing things toward better and more effective solutions, and workable solutions. And my colleague mentioned what we often use in the human rights community—best practices. This is really, what are the good, positive policies that worked in other countries?

There’s no reason we should not look at them. Actually, the U.S. Government engages in all sorts of best practices on national security issues, diplomatic issues and so on, so similarly, we, as a human rights movement, human rights community, would look at good policies, where they work to minimize damage, minimize human rights violations, and at the same time, allow the Government to take on an issue and to deal with a problem like terrorism, for example. So it’s really been a very important—I must say, on the individual level, last year, I maybe traveled the least.

And there is a feeling that my trips—instead of going to Geneva and to Warsaw and to Brussels, I was more making the trip from New York to D.C., which is a very good sign. And I hope that that will continue. We’ll use the international when we really don’t have any other option for us here in the United States.

Ms. NEILD. You’ve covered it. I mean, Governments are really sensitive to international criticism. It is a marvelous opportunity to get attention. I do think that international treaties and standards like this sort of express our common values, and point to this as, not a problem of a particular country, but a shared problem. And hopefully, we can look for shared solutions.

One difference in Europe is that we do have the European Court of Human Rights, and its rule is binding. And member states are meant to bring their own legislation practice into accord with that. And they have three rulings that are relevant to ethnic profiling. We need to bring them a direct case that will really, kind of, get even tighter on some of these practices. But there’s a body of case law that’s interested and growing.

And I would also just close by saying that I think that, as the OSCE High Commissioner for National Minorities and others already are doing, there’s a lot of work that can be done at the international level to bring both law enforcement and civil society together around positive measures to have a conversation, not to just feel shamed and defensive and kind of kick back, but to move forward.

Dr. THOMPSON. Ms. Williams, if you had any closing remarks. I apologize for asking to come to the front but we are also recording this.

*Question:* Thanks very much. I did have a few questions picking up on your last point. I wondered, had you given any consideration to pursuing your case through the European Court of Human Rights, given the fact that it does have this binding nature, which Rachel had mentioned?

And then I wondered—a question for the two of you, in a certain sense. One is, with the European Union and freer travel, sort of, you know, internal borders of the OSCE, I'm wondering, can you—if your experience has been—if you've traveled elsewhere in the European Union, and have you encountered any difficulties elsewhere in the European Union?

And then, I wondered, have you followed trends as the expansion of the European Union, especially with workers coming from Eastern and Central Europe to—I know there's a large population of construction workers in Portugal, and perhaps elsewhere in Spain and so forth—in terms of those kinds of discriminations, and how the EU, to the extent that it is trying to grapple with the fact of discrimination against other individuals from within the European Union.

And then I wondered, if I could raise a question, did you talk about—some of your points lead to the question of data. And of course, as the Commission has been instrumental in trying to promote combating anti-Semitism, one of the difficulties that we've encountered is the great difficulty in terms of getting anything that comes to accuracy, in terms of the data.

And it strikes me as a little odd, too, then because you're in a certain sense, relying, in part, except for courageous individuals, like Ms. Williams, on who comes forward and say, I'm not going to go along with this—you're dependent, to some extent, upon the law enforcement agencies themselves to keep accurate statistics, and statistics that do incorporate the types of ethnic background or racial background that you're trying to build the case against.

I guess, just drawing from one personal experience, trying to assist a victim of pickpocketing in Central Europe—this was before the expansion of the European Union—and when I accompanied this young woman to the police station, the very first question out of the police authority—and I wonder if you could address this—in terms of, sort of, leading and sort of, already prejudicing what the result might be, the very first question was, “was the person who picked this woman's purse of this background?”

So before we had got into any of the specifics, they had already concluded that, in all likelihood, a Roma was responsible for, in this particular instance. So I wondered if—those are a few issues that had come to mind during the course of your presentation.

Ms. NEILD. Sorry, I have to leave for the airport, so the issue with Schengen is quite problematic, and particularly with some of the newer ascension countries—(inaudible)—not necessarily enjoy all of the—(inaudible)—protections. And we're particularly pre-occupied, at this time, with the treatment of Roma and deportations of Roma back to Romania from Italy. And even Frontex, the European border agency, has been involved in deportations that they have publicly recognized now had not been conducted as they should.

Schengen includes, in article six, a specific nondiscrimination clause. And the question of what that means in practice, and what kind of training they get, is an important one. The European Fundamental Rights Agency is meant to be doing joint training with Schengen this year—I'm sorry, with Frontex—but I'm not quite sure what the status of that, or indeed, what the approach to the training is, because training can be a whole realm of things that have very different effects on the actual practice.

Just on the law enforcement data, I mean, our problem with profiling is, we don't have ethnic data, because in the wake of the Second World War, almost no European

countries outside of the U.K. would gather any ethnic data. And we don't have law enforcement data, because very few countries, outside the U.K., give any law enforcement statistics. They give crime statistics, which include how many immigrants are in prison. So we've—I think that's one of the things our research has sort of helped to do, is start to generate this.

And we have introduced stop forms, and we've gotten law enforcement data through that. There are issues about how that can be manipulated, and so on, but I think that our stop forms have been reasonably reliable, because you do see a lot of disproportionality coming out of them. So if they are manipulating them, they're not doing it as well as they should be. But that said, you can obviously do surveys, and there's some survey data. And the Fundamental Rights Agency is doing a little of that.

And then, if you are really dedicated and get the resources, you can do direct observational studies. And we did one of those in Paris, where we benchmarked the population in certain places to have a direct comparison of who was there, available to be stopped—what does that population look like in the Paris metro? And then we had observers who followed the police around for about 4 months with cell phones.

If you have a piece of paper and you're writing, they stop you. If you have a cell phone and you text, you're completely invisible. [Laughter.] They would text in variables. So we put together the ethnic data on that, and that's where we got a range of disproportionality that went up to 14 times more likely to be stopped, in some cases. So you can get the data, but it's really resource-intensive at the moment.

We need better systematic data gathering of ethnic statistics—not personalized data, which allows individuals to be tracked; just the statistics to see what's going on. And how that happens, I think, is something that law enforcement agencies and the civil rights community in Europe needs to, kind of, belly up to the table and deal with that one, because there's a lot of anxiety and reluctance about it still.

Mr. DAKWAR. The only thing I would add—I think it very much answered the question, and I agree with all of what was said—I would just add that even under—there are some states, as you know, have data collection requirement under state racial profiling acts, or ending racial profiling acts on the state level. And this has been instrumental in trying to get information out about the police practices.

I know in New York City, the NYPD—every year, the NYCLU receives this data and analyzes it and sees the patterns. And they're still—based on that, they engage with the local—with the NYPD in this particular case. And even when, as you said, you can't completely rely on law enforcement for this, you can start with something. There are some places where Freedom of Information Act requests have also produced a lot of information about police practices, particularly around the local enforcement of immigration laws, for example.

I know in Texas, that's been particularly instrumental in avoiding—or, when there was a loophole in the racial profiling act in Texas where, for example, Latino would not be considered as a race—a separate race. So El Paso, which is 80 percent Latino community—and the sheriff there was stopping people—it was not considered racial profiling because they were not even considered a different race, for that matter, which is absurd, to look at it this way. So there are ways to go around the manipulation of this.

And last, I would just add the complaint mechanism oversight—when you have independent complaint mechanism on police conduct, law enforcement, you encourage those

kinds of complaints to come forward, and ensure that they are going to be receiving the right attention, and with an independent process of reviewing those complaints, rather than depending on the same police to police itself.

Dr. THOMPSON. And I think there was a question about the European courts.

Ms. WILLIAMS. Actually, after the case was thrown out of the last court—the tribunal court—constitutional court—in Spain, there were two options. One could have been, at that particular time, in 2001, the European court—you know, human rights court. That, you have a deadline of 6 months to present the case to that court. Therefore, that option is no—wasn't open to me when Open Society took it over in 2004. Between 2004 and 2006, they prepared the case. And it's not an option now. And I don't remember your question for me.

*Question:* My second question was if you've encountered difficulties elsewhere in the European Union?

Ms. WILLIAMS. No, no, I haven't. I travel frequently to France and, from time to time, Italy, and I haven't. Now, I have in Spain. In other words, in Spain—I haven't been stopped, as I was before, but I have been stopped while driving, but not necessarily questioned for a traffic, say, violation or infraction. And at one point, we actually did ask the policeman if I were being stopped—[laughter]—because of the color of my skin. He said oh, no, no, no. Oh no, not at all.

*Question:* Did he give another reason?

Ms. WILLIAMS. No, no, no. So I have been stopped two other times, but this—in this case, it was not on foot; it was while driving a car.

Dr. THOMPSON. Now, on that note, I will thank everyone for coming and joining us today. I think you hear from the panel that this is an issue that we're going to have to continue to look at and discuss some common solutions and best practices that might actually work in North America, as well as abroad. So we actually look forward to continuing that discussion with you, and hopefully, we'll be able to welcome Ms. Williams back for the next conversation. So thank you all for participating today.

Ms. WILLIAMS. Thank you.

Mr. DAKWAR. Thank you.

Ms. NEILD. Thank you. [Applause.]

[Whereupon at 3:30 p.m., the briefing ended.]

# APPENDIX

## MATERIAL SUBMITTED FOR THE BRIEFING RECORD BY RACHEL NEILD

### SUMMARY OF THE CASE OF *Rosalind Williams Lecraft v. Spain*

*Rosalind Williams was stopped by a police officer on the platform of the station in Valladolid, Spain, and told to produce her identity documents. When asked why she was the only person stopped, the police officer told her “It’s because you’re Black.” Williams complained of her treatment to the Human Rights Committee of the United Nations which, in June 2009, found that it was unlawful discrimination.*

### FACTS

In the afternoon of December 6, 1992, Rosalind Williams arrived at the Valladolid Campo Grande railway station on a train coming from Madrid. She was with her husband, Federico Augustin Calabuig, and their son Ivan Calabuig-Paris. Moments after they disembarked from the train, a National Police (Policia Nacional) officer approached Williams and asked her to produce her identity document (the Documento Nacional de Identificación or DNI). The police officer did not ask her husband, son, or any other passengers on the platform for their identity documents.

Williams and her husband asked the reason for the identity check. The officer replied that he was obligated to check the identity of persons who “looked like her,” adding that “many of them are illegal immigrants.” He went on to explain that in carrying out the identity check, he was obeying an order of the Ministry of the Interior that called on National Police officers to conduct identity checks, in particular, of “persons of color.” Williams produced her identity document, and took the number of his badge.

### LEGAL PROCEEDINGS

The following day Williams lodged a complaint with the National Police Headquarters in Valladolid (Jefatura Superior de Policia). The proceedings were dismissed at the pretrial stage after the after the court found that no crime had been committed.

In February 1993, Williams submitted a complaint to the Ministry of the Interior (Ministerio del Interior Registro General), challenging the apparent order of the ministry that called on National Police officers to target persons of color for identity checks and requesting that the General Administration of the State take for the unlawful actions of the Ministry of the Interior. The complaint argued that the practice of stopping people based on their race or ethnicity when carrying out identity checks contravened well-established Spanish and European legal norms against discrimination, arbitrary detention, and protecting freedom of movement. She also submitted medical documents as to the effect of the incident on her. The ministry rejected the complaint, and so Williams appealed to the National Court (Audiencia Nacional Sala de lo Contencioso-Administrativo).

The National Court dismissed the appeal on November 29, 1996, finding that there was an obligation to produce identity documents and that police were authorized to

demand identification from foreigners. Because Williams belonged to the “black race” she was therefore more likely to be a foreigner.

#### SPANISH CONSTITUTIONAL COURT

Williams appealed to the Spanish Constitutional Court, alleging a violation of the prohibition of discrimination in Article 14 of the Spanish Constitution and of the European Convention on Human Rights. In a six-to-one decision issued on January 29, 2001, the Constitutional Court rejected her complaint, finding that a person’s racial or ethnic identity is a legitimate indicator of nationality, and to refer to the race of a person for a “descriptive” manner is not per se discriminatory, as “specific physical or ethnic characteristics can be taken into consideration as reasonably indicative of the national origin of the person who has them.” The court explained:

[T]he police action used the racial criterion as merely indicative of a greater probability that the interested party was not Spanish. None of the circumstances that occurred in said intervention indicates that the conduct of the acting National Police officer was guided by racial prejudice or special bias against the members of a specific ethnic group, as alleged in the complaint. Thus, the police action took place in a place of travelers’ transit, a railway station, in which, on the one hand, it is not illogical to think that there is a greater probability than in other places that persons who are selectively asked for identification may be foreigners; moreover, the inconveniences that any request for identification generates are minor and also reasonably assumable as burdens inherent to social life.

On behalf of Williams, the Open Society Justice Initiative filed a complaint to the Human Rights Committee of the United Nations together with Women’s Link Worldwide and SOS-Racismo Madrid.

#### ARGUMENTS

The communication to the Human Rights Committee argued that the treatment of Williams violated various provisions of the International Covenant on Civil and Political Rights (ICCPR).

- **Jus Cogens.** The prohibition against racial discrimination is recognized in all major international and regional human rights instrument and is a jus cogens norm of international law, creating obligation on states to ensure it does not occur, in accordance with Art.26 ICCPR.
- **Indirect and Direct.** International law prohibits both direct and indirect discrimination, as does the European Union Race Directive.
- **Public Officials.** Police officers are agents of the state and there is a positive obligation on the state to ensure they do not discriminate, through legislation where necessary.
- **Racial Profiling.** The law enforcement practice of relying on generalizations about race, ethnicity, or national origin rather than specific objectively identified evidence that would link perpetrators to a crime is a form of racial discrimination that violates human rights law.

- Finding. On June 30, 2009, the UN Human Rights Committee published its views in which it considered that there had been a violation of the ICCPR.

#### ADMISSIBILITY

The Spanish Government had argued that Williams had delayed too long in making her submission to the UN Human Rights Committee. Williams replied that she was not able to do so earlier due to the emotional stress and financial cost of nine years of litigation in Spain. Only when Williams was able to find free legal assistance from an NGO was she able to continue the case. The Committee noted the difficulty of obtaining legal aid and found no abuse (at para. 6.3).

#### MERITS

The committee gave its views on the question of whether racial profiling was a discriminatory practice.

7.2 The Committee believes that it is generally legitimate to carry out identity checks for the purposes of protecting public safety and crime prevention or to control illegal immigration. However, when the authorities carry out these checks, 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.

7.4. In this case, it appears that this was a case of a general identity check. The petitioner states that no one else around her was the target of a similar check and that the police officer that intercepted her alluded to her physical traits to explain why he asked her, and not others around her, to show her identity documents...[T]he Committee can only conclude that the petitioner was singled out only because of her racial characteristics, and this was the decisive factors for suspecting unlawful conduct.

8. Based on the foregoing, the Human Rights Committee considers that the facts before it reveal a violation of Article 26, read together with Article 2, paragraph 3 of the Covenant.

#### IMPLEMENTATION

The UN Human Rights Committee concluded that the law should be changed, that there should be a public apology to Williams, and that Spain must “take all necessary measures to prevent its officials from committing acts as in the present case.” (at para. 9) The Committee also requested that the State party publish the opinion of the Committee and gave Spain until the end of December 2009 to implement the opinion (at para. 10).

## CURRENT STATUS

The Human Rights Committee expressed the view that the correct remedy for the violation of the Covenant was for there to be a public apology. This reflects a growing body of human rights law which recognizes that it is necessary for there to be a public aspect to an apology, particularly where the treatment complained of contained an element of humiliation or degradation. Rosalind Williams Lecraft received apologies on behalf of the Spanish state in a face-to-face meeting with Minister of Foreign Affairs and Cooperation Miguel Angel Moratinos on 11 November 2009, and again in written form in a letter addressed to her by Minister of Interior Alfredo Perez Rubacalba on 20 January 2010. But to date, there has been no public apology by the government of Spain. While welcoming the direct expressions of regret, an apology made behind closed doors cannot be considered sufficient to remedy the human rights violation attributed to Spain by the Committee. This public element of the apology is necessary in order to acknowledge the admission of fault and to ensure that any expression of regret is genuine. The Spanish government should move to acknowledge and publish their responsibility in this matter in a truly public forum that will be accessible to members of Spain's police and security forces

The Human Rights Committee expressed the view that in order to remedy the violation of the Covenant the government of Spain must take all necessary steps to ensure that its officials do not repeat the kind of acts observed in this case. Specifically, the government should undertake the following measures immediately:

Firstly, amend the provisions that regulate police powers to conduct identity checks under relevant laws 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 checks, except when they form part of a specific suspect description or derive from specific and reliable intelligence; and

Secondly, 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 and identify situations where factors such as race, ethnicity and other physical characteristics can be taken into account and when they can not.

In a letter to counsel dated 13 January 2010, the Minister of Justice notes that in the seventeen years since Ms. Williams Lecraft was stopped for an police identity check solely on the basis of her skin color, Spain has become a more multi-ethnic society, and that police forces have subsequently received human rights training that focuses on diversity, equal treatment, and the prohibition of discrimination on the basis of racism, national origin, religion and other grounds. In his letter to Ms. Williams Lecraft dated 30 January 2010, the Minister of Interior states that this ongoing training effort, together with the government's commitment to prosecute police misconduct of all kind, constitute sufficient measures to prevent similar discriminatory police identity checks from occurring in the present and thus give due effect to the views of the Committee.

While recognizing the importance of the work that the Spanish government is undertaking with governmental agencies and elected representatives to develop the anteproyectos de las nuevas Leyes de Personal del Cuerpo Nacional de Policia y de la Guardia Civil is indeed important. However, it is not sufficient to address the current

practice of ethnic profiling across Spain. The Spanish government must take specific action in the present to stem its prevalence.

Although the ongoing training of police officers is to be commended, the provision of general human rights and diversity training is not sufficient to prevent ongoing ethnic profiling practices. In order for law enforcement officers to understand how and when they may be relying explicitly—or not—on negative ethnic stereotypes, they need specific training on this practice. Given the nature of many manifestations of ethnic profiling as a form of indirect discrimination, it is essential to address the specific policies, powers and practices that are leading to disproportionate and discriminatory outcomes. This is best achieved through training that explains applicable legal standards and provides practical examples of correct and incorrect use of those powers, and complemented by supervision that assures that officers are applying principles learned in training in their daily operational practice. Training should discuss ethnic profiling explicitly, and address both the quality of encounters and quantitative disproportionality.

Furthermore, although several police forces throughout Spain have adopted innovative measures to identify, monitor and address ethnic profiling in their jurisdictions, this discriminatory practice remains a problem throughout Spain. This is especially true in the context of immigration control, a law enforcement area with which the UN Human Rights Committee was particularly concerned. For example, in the past year it has been revealed that local police in Madrid received directives to target specific nationalities for immigration roundups—orders that omitted any instruction to abstain from targeting persons on the basis of their specific physical or ethnic characteristics. More recently, a January 2010 circular issued by the Comisaria General de Extranjeria y Fronteras effectively encouraged the practice of carrying out massive and indiscriminate police identity checks in public places for the purposes of immigration control.<sup>1</sup> These wide-scale, general operations raise legitimate concerns that many persons are being targeted for stops and even detentions on the basis of what they look like, in direct contradiction of the Committee's views.<sup>2</sup> It would be impossible for the police to implement these orders without relying on ethnic/racial characteristics.

#### ROSALIND WILLIAMS-LECRAFT TIMELINE

December 6, 1992. Williams stopped in Valladolid Railway Station.

December 7, 1992. Complaint filed with National Police Headquarters, later rejected.

February 15, 1993. Complaint filed with Ministry of the Interior, later rejected.

April 6, 1994. Appeal filed with the National Court.

November 29, 1996. National Court rejects appeal.

October 5, 1998. Appeal to Constitutional Court is registered.

January 29, 2001. Constitutional Court rejects appeal.

September 11, 2006. Communication submitted to the UN Human Rights Committee.

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<sup>1</sup> Ministerio de Interior, Dirección General de la Policía y de la Guardia Civil, Comisaría General de Extranjería y Fronteras, Secretaría General Servicio de Recursos e Informes, *Circular núm. 1/2010*.

<sup>2</sup> Daniel Ayllón, "Un informe denuncia agujeros legales en las expulsiones exprés," *Público.es*, February 11, 2009; Sindicador Unificado de Policía, Comisión Ejecutiva Nacional, *La Circular sobre extranjería vulnera ley y los derechos: La recurrirá por atentar contra derechos de los inmigrantes y poner en riesgo a los policías*, February 9, 2010, available at <http://www.sup.es>.

June 30, 2009. Views of the Human Rights Committee published.

December 31, 2009. Deadline for Government of Spain to make a public apology.

June 30, 2009 UN Human Rights Committee finds that there had been a violation of the ICCPR able to receive press releases, articles, and other materials by topic or countries of particular interest.

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