

**THIRD-PARTY INTERVENTION BY THE SPECIAL RAPPORTEUR ON  
CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION,  
XENOPHOBIA AND RELATED INTOLERANCE IN ACTION DE GROUPE EN  
CESSATION DE MANQUEMENT BEFORE CONSEIL D'ETAT, SECTION DU  
CONTENTIEUX**

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## I. INTRODUCTION

1. This submission is by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Ms. E. Tendayi Achiume. In the performance of her mandate, the Special Rapporteur is accorded certain privileges and immunities as expert on mission for the United Nations pursuant to the Convention on the Privileges and Immunities of the United Nations, adopted by the United Nations General Assembly on 13 February 1946. This submission is provided on a voluntary basis without prejudice to, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials and experts on missions, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations, to which France is a party since 18 August 1947. Authorization for the positions and views expressed by the Special Rapporteur, in full accordance with her independence, was neither sought nor given by the United Nations, including the Human Rights Council, the Office of the High Commissioner for Human Rights, or any of the officials associated with those bodies.
2. The purpose of this legal opinion is to provide the court with analysis of racial profiling and systemic racial discrimination under international human rights law, as well as France's legal obligations in that regard.

## II. THE INTEREST OF THE SPECIAL RAPPORTEUR IN THE RESOLUTION OF THIS MATTER

3. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which France acceded to on 28 July 1971, establishes the obligations of State parties to respect and ensure racial equality and the right to be free from racial discrimination. Several other human rights treaties also contain prohibitions on racial discrimination and other forms of discrimination, including the International Covenant on Civil and Political Rights (ICCPR), to which France acceded on 4 November 1980.
4. The Human Rights Council, the central human rights body of the United Nations (UN), has affirmed that “racism, racial discrimination, xenophobia and related intolerance condoned by governmental policies violate human rights, as established in the relevant international and regional human rights instruments, and are incompatible with democracy, the rule of law and transparent and accountable governance.”<sup>1</sup> The Human Rights Council has also urged “[g]overnments to summon the necessary political will to take decisive steps to combat racism in all its forms and manifestations.”<sup>2</sup>
5. As a State party to multiple human rights treaties, France has legal obligations under the ICERD, the ICCPR, and other instruments of international human rights law “in good

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<sup>1</sup> Human Rights Council Resolution 38/19 (2018), U.N. Doc. A/HRC/RES/38/19, preamble.

<sup>2</sup> Human Rights Council Resolution 7/33 (2008), U.N. Doc. A/HRC/RES/7/33, para. 4.

faith,”<sup>3</sup> and may not invoke “the provisions of its internal law as justification for its failure to perform a treaty.”<sup>4</sup>

6. With regard to all issues and alleged violations falling within the purview of her mandate, UN Human Rights Council resolution 7/34 mandates the Special Rapporteur “to investigate and make concrete recommendations, to be implemented at the national, regional and international levels, with a view to preventing and eliminating all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance.”<sup>5</sup> In accordance with this resolution, the Special Rapporteur’s recommendations and guidance include amicus briefs that are based upon analysis of international human rights law, including relevant jurisprudence, standards, and international practice, as well as relevant regional and national laws, standards, and practices.
7. Since taking up her mandate, Special Rapporteur Achiume has reported on racial profiling and discrimination in a number of countries. She has also examined the interconnected nature of racial profiling and the discriminatory use of digital technologies within her thematic reports to the UN Human Rights Council and the General Assembly.<sup>6</sup> In addition, previous holders of the Special Rapporteur’s mandate have consistently reported on racial profiling, within their country and thematic focussed engagement with UN Member States.<sup>7</sup>
8. This legal opinion will address the following issues:
  - a. The prohibition of racial profiling and systemic racial discrimination under international law and its application to France; and
  - b. France’s positive obligations under international human rights law to address racial profiling, as an integral part of efforts to dismantle systematic racial discrimination.

### **III. THE PROHIBITION OF RACIAL PROFILING AND SYSTEMIC RACIAL DISCRIMINATION UNDER INTERNATIONAL LAW**

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<sup>3</sup> Vienna Convention on the Law of Treaties, art. 26.

<sup>4</sup> Vienna Convention on the Law of Treaties, art. 27.

<sup>5</sup> Human Rights Council Resolution 7/34 (2008), U.N. Doc. A/HRC/RES/7/34, para. 2.

<sup>6</sup> Please see the reports of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on discriminatory use of digital technologies (multiple years), U.N. docs, A/HRC/48/76 available here: <https://www.ohchr.org/fr/documents/thematic-reports/ahrc4876-racial-and-xenophobic-discrimination-and-use-digital>; A/75/590 available here; <https://undocs.org/Home/Mobile?FinalSymbol=A%2F75%2F590&Language=E&DeviceType=Desktop&LangRequested=False>; and A/HRC/44/57 available here: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F44%2F57&Language=E&DeviceType=Desktop&LangRequested=False>

<sup>7</sup> Various reports of the mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, (multiple years) U.N. docs. A/HRC/29/46; A/70/335; A/HRC/32/50; A/HRC/35/41; A/72/287; A/HRC/38/52; A/73/305; A/HRC/44/57; A/75/590; A/HRC/48/76; A/HRC/23/56/Add.1; A/HRC/23/56/Add.2; A/HRC/26/49/Add.1; A/HRC/35/41/Add.1; A/HRC/35/41/Add.2; A/HRC/35/41/Add.3; A/HRC/41/54/Add.2; A/HRC/41/54/Add.1; A/HRC/44/57/Add.1; and A/HRC/44/57/Add.2.

9. The following section of this legal brief, in III a, will outline the prohibition of racial discrimination in customary international law, as derived from ICERD and other relevant human rights treaties. It will thereafter demonstrate how the prohibition of racial discrimination has been applied to situations of institutional and structural forms of discrimination and should therefore be interpreted as including a prohibition of systemic racial discrimination. This brief, in section III b, will define racial profiling and explicate that it is a violation of the prohibition of racial discrimination, including systemic racial discrimination, due to its inherently discriminatory character and the systemised harm suffered by affected communities. It will subsequently demonstrate that racial profiling, in addition to being in contravention of the prohibition of racial discrimination, as a peremptory norm of international law, can be a violation of multiple human rights, including *inter alia*, those to freedom of movement, equality before the law, liberty and security of person and privacy. In section III c, this brief will demonstrate that despite France being a State party to the majority of foundational human rights treaties, multiple international, regional and national human rights organisations have reported persistent and deeply entrenched patterns of racial profiling by police officers carrying out identity checks, thereby indicating that France is in violation of its duties under international human rights law.

**a. International Law Prohibits Racial Discrimination, including Systemic Racial Discrimination**

10. The prohibition on racial discrimination has achieved the status of peremptory norms of international law<sup>8</sup> and as an obligation *erga omnes*.<sup>9</sup> States cannot derogate from these obligations—including during times of emergency—without violating international law.<sup>10</sup>

11. France laudably is State Party to the majority of foundational human rights treaties, including the ICERD, the ICCPR, the International Covenant on Economic and Social Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD), the Convention Against Torture (CAT) and the Convention for the Protection of All Persons from Forced Disappearance (CED).<sup>11</sup>

12. France's broad international human rights law commitments include an obligation to ensure racial equality and to eliminate racial discrimination. This obligation not only arises from its commitments under ICERD, but also from its other human rights treaty commitments; nearly every human rights treaty contains a provision on non-discrimination. Article 2, 1 of the ICCPR makes clear that the rights recognized in the Covenant are to be recognised without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 2, 2 of ICESCR outlines similar obligations with regard to economic, social and cultural rights.

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<sup>8</sup> Human Rights Committee general comment No. 29, (2001) U.N. Doc. CCPR/C/21/Rev.1/Add.11, paras. 8, 13(c).

<sup>9</sup> *Barcelona Traction, Light & Power Co. (Belg. v. Spain)*, (1970), I.C.J. 3 (Feb. 5), at 32, para. 34.

<sup>10</sup> Human Rights Committee general comment No. 29, (2001) U.N. Doc. CCPR/C/21/Rev.1/Add.1, paras. 8-9, 13, 15-16.

<sup>11</sup> See OHCHR, *Ratification, Reporting & Documentation for France*.

13. The most comprehensive prohibition of racial discrimination can be found in ICERD. As Article 1(1) reflects, States drafted ICERD to incorporate a broad definition of racial discrimination:<sup>12</sup>

*“In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”*

14. In their discussions of State obligations to ensure equality and non-discrimination, United Nations treaty bodies have frequently stated that the rights enshrined in international human rights treaties must generally be guaranteed to everyone, including persons belonging to national, religious, racial and ethnic minorities.<sup>13</sup>
15. Under ICERD, State parties, including France, have committed to pursuing the realization of a domestic and international community free of all forms of racism.<sup>14</sup> Article 2 of ICERD requires that in order to facilitate the substantive realization of racial equality, States parties must ensure that they neither take part in any act of racial discrimination nor further programs that lead to racial inequality.<sup>15</sup> Furthermore, where racism, racial inequality, or racial discrimination exist, they have an obligation to take effective and immediate action.<sup>16</sup> This obligation to act is absolute. State parties’ obligations to prevent racial inequality and racial discrimination require them not only to undertake remedial action, but also preventive action.<sup>17</sup>
16. Obligations to achieve racial equality and ensure non-discrimination extend to all areas of governmental policy and influence, including all elements of law enforcement. States must ensure that racial and ethnic groups enjoy the full scope of their human rights, as encompassed in ICERD article 5 and in each human rights treaty. Accordingly, France must ensure that members of racial and ethnic groups within its territory enjoy the full scope of, *inter alia*, their rights to freedom of movement,<sup>18</sup> privacy,<sup>19</sup> equality before the law,<sup>20</sup> liberty and security of person,<sup>21</sup> and freedom from torture and other cruel and degrading treatment.<sup>22</sup> In the case of those under 18, France must uphold the right to have their best interests be the primary consideration in all actions affecting them.<sup>23</sup>

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<sup>12</sup> ICERD art. 1(1).

<sup>13</sup> Treaty bodies have repeatedly emphasized this element of human rights law. See, for example, Human Rights Committee general comment No. 18; Committee on Economic, Social and Cultural Rights general comment No. 20; Committee on the Elimination of Racial Discrimination general recommendations Nos. XX, XXII, XXIII, XXIV, XXVII, XXIX, XXX & XXXIV. These general comments are available in U.N. Docs. HRI/GEN/1/Rev.9(Vol.I) & HRI/GEN/1/Rev.9(Vol.II).

<sup>14</sup> ICERD preamble para. 10 & arts. 2-3; U.N. Charter arts. 55(c) & 56; ICCPR arts. 2, 26; Human Rights Committee general comment No. 18, U.N. Doc. HRI/GEN/1/Rev.9(Vol.I), para. 1.

<sup>15</sup> ICERD, article 2.

<sup>16</sup> See ICERD art. 2 (“States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.”).

<sup>17</sup> ICERD arts. 2, 3, 5, 6.

<sup>18</sup> ICERD, Art. 5 (d, i) & ICCPR Art. 12.

<sup>19</sup> ICCPR, Art. 17.

<sup>20</sup> ICERD, Art. 5 & ICCPR, Art. 26.

<sup>21</sup> ICERD, Art. 5 & ICCPR, Art. 9.

<sup>22</sup> ICCPR, Art 7 & CAT, Art 2.

<sup>23</sup> CRC, Art 3.

17. The vision for equality in the international human rights framework is substantive, and requires States to take action to combat intentional or purposeful racial discrimination, as well as to combat de facto or unintentional racial discrimination. The CERD has clarified that the prohibition of racial discrimination under ICERD cannot be interpreted restrictively and emphasizes that the Convention applies to purposive or intentional discrimination, as well as discrimination in effect<sup>24</sup> and structural discrimination.<sup>25</sup>
18. In 2020, following the murder of George Floyd, Breonna Taylor and many others, we witnessed an unprecedented, transnational racial justice uprising. This uprising called attention to systemic racism in law enforcement against people of African descent, but also expanded to encompass the systemic racial injustice that characterizes the lives of racially and ethnically marginalized groups globally. Within this context, the concept of systemic racial discrimination, which has also been invoked within French domestic jurisprudence<sup>26</sup>, has been an increasingly visible framework within the UN human rights apparatus.
19. The Committee on Economic, Social and Cultural Right (CESCR)'s General Comment No. 20 provides the most authoritative definition of systemic discrimination. Paragraph 12 states:
- “The Committee has regularly found that discrimination against some groups is pervasive and persistent and deeply entrenched in social behaviour and organization, often involving unchallenged or indirect discrimination. Such systemic discrimination can be understood as legal rules, policies, practices or predominant cultural attitudes in either the public or private sector which create relative disadvantages for some groups, and privileges for other groups.”*<sup>27</sup>
20. Other international and regional mechanisms have made analogous references to structural, systemic and institutional racism. The CERD has elucidated the concept of structural discrimination against people of African descent as follows:<sup>28</sup>
- “Racism and structural discrimination against people of African descent, rooted in the infamous regime of slavery, are evident in the situations of inequality affecting them and reflected, inter alia, in the following domains: their grouping, together with indigenous peoples, among the poorest of the poor; their low rate of participation and representation in political and institutional decision-making processes; additional difficulties they face in access to and completion and quality of education, which results in the transmission of poverty from generation to generation; inequality in access to the labour market; limited social recognition and valuation of their ethnic and cultural diversity; and a disproportionate presence in prison populations.”*
21. In 2010, the Intergovernmental Working Group on Effective Implementation of the Durban Declaration and Programme of Action dedicated a session to the issue of structural discrimination. The report of this session discussed definitions of structural discrimination, including that outlined by the CESCR, and further argued that generally:<sup>29</sup>

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<sup>24</sup> See Committee on the Elimination of Racial Discrimination, general recommendation No. 32, (2009), paras. 6–7.

<sup>25</sup> See, for example, Committee on the Elimination of Racial Discrimination, general recommendation No. 34 (2011) on racial discrimination against people of African descent, paras. 5–7.

<sup>26</sup> Paris Employment Tribunal, Judgment on the systemic, racial discrimination suffered by undocumented Malian workers in the construction sector, 17 December 2019, no. 17/10051.

<sup>27</sup> Committee on Economic, Social and Cultural Rights General Comment No.20 (2009) U.N. doc. E/C.12/GC/20, para. 12.

<sup>28</sup> Committee on the Elimination of Racial Discrimination, general recommendation No. 34 (2011) on racial discrimination against people of African descent, para. 6.

<sup>29</sup> Report of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action on its eighth session, (2010), U.N. doc. A/HRC/16/64, para. 108.

*“Structural racial discrimination may refer to racist, xenophobic, intolerant or at face value neutral patterns of behaviour and attitudes within societal structures that may have disproportionate effect on specific individuals or groups of individuals in relation to their race, colour, descent or national or ethnic origin. According to some of the views expressed during the panel discussion, the existence of such discrimination is related inter alia to the persistence of deeply rooted racial prejudice and negative stereotypes in societies that perpetuate inequality.”*

22. In the aftermath of the transnational Black Lives Matter protests of 2020, the UN High Commissioner for Human Rights was tasked with producing a report that examined, *inter alia*, systemic racism.<sup>30</sup> In that report, the High Commissioner adopts the following definition of “systemic racism” in relation to people of African descent, but which also illuminates its meaning in relation to other groups:

*“Systemic racism against Africans and people of African descent, including as it relates to structural and institutional racism, is understood to be the operation of a complex, interrelated system of laws, policies, practices and attitudes in State institutions, the private sector and societal structures that, combined, result in direct or indirect, intentional or unintentional, de jure or de facto discrimination, distinction, exclusion, restriction or preference on the basis of race, colour, descent or national or ethnic origin. Systemic racism often manifests itself in pervasive racial stereotypes, prejudice and bias and is frequently rooted in histories and legacies of enslavement, the transatlantic trade in enslaved Africans and colonialism.”<sup>31</sup>*

23. The different definitions above share common themes including the identification of the historical roots of systemic manifestations of discrimination in colonial regimes including slavery, the role of State laws, policies and practices in enacting discrimination broadly, the pervasive, persistent and deeply entrenched nature of systemic discrimination, and its disproportionate impact on affected racial and ethnic groups. There is also significant overlap between different definitions and terminologies in their conceptualisation of systemic racial discrimination as encompassing multiple and intersecting forms of direct discrimination, explicitly motivated by intolerance or prejudice, and indirect discrimination, whereby discrimination results from disparate impacts on groups according to their race, ethnicity or national origin, even when an explicit intent to discriminate is absent.<sup>32</sup> Whether one uses the term “structural”, “institutional”, or “systemic” to describe such racial discrimination, due to its prohibition of indirect discrimination, ICERD prohibits all such manifestations of societally embedded racism.

**b. Racial Profiling Violates the Prohibition on Racial Discrimination and Other Human Rights Provisions Under International Law and Can Amount to Prohibited Systemic Racial Discrimination Under International Human Rights Law**

24. The 2001 Durban Declaration and Programme of Action (DDPA) defines racial profiling as:

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<sup>30</sup> Resolution adopted by the Human Rights Council on 19 June 2020, (2020), U.N. doc. A/HRC/43/1, para. 3.

<sup>31</sup> Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officials, report of the United Nations High Commissioner for Human Rights, (2021), U.N.doc. A/HRC/47/53, para. 9.

<sup>32</sup> Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (2020), U.N. doc. A/HRC/44/57, para. 4.

*“Comprising the practice of police and other law enforcement officers relying, to any degree, on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity.”*<sup>33</sup>

25. General Recommendation No. 36 of the CERD discusses the definition of racial profiling. The General Recommendation offers analysis of relevant provisions and practices of the U.N. treaty bodies, including ICERD, other UN human rights mechanisms,<sup>34</sup> regional human rights systems,<sup>35</sup> and the DDPA.<sup>36</sup> According to this analysis, racial profiling is:
- (a) committed by law enforcement authorities;
  - (b) is not motivated by objective criteria or reasonable justification;
  - (c) is based on grounds of race, colour, descent, national or ethnic origin or their intersection with other relevant grounds, such as religion, sex or gender, sexual orientation and gender identity, disability and age, migration status, or work or other status;
  - (d) is used in specific contexts, such as controlling immigration and combating criminal activity, terrorism or other activities that allegedly violate or may result in the violation of the law.<sup>37</sup>
26. The General Recommendation makes plain that racial profiling is in violation of the prohibition of racial discrimination.<sup>38</sup> It also outlines how racial profiling is committed through certain official patterns and activities, such as arbitrary stops, searches, identity checks, investigations and arrests.
27. General Recommendation No.36 establishes that racial profiling runs contrary to non-discrimination and equality before the law as foundational principles of international human rights law, as well as to the “very idea of the Convention.”<sup>39</sup>
28. Several international human rights mechanisms have found that racial profiling is both a manifestation of systemic racism and a contributor to the perpetuation of societal racial stereotypes, prejudice and bias. The CERD’s General Recommendation No. 36 conceptualises racial profiling as both an individual and a “structural” violation. The CERD found that racial profiling and broader societal racism, including hate speech, are closely interrelated, in that stereotyping and hate speech can lead to law enforcement officers engaging in racial profiling and profiling can in turn increase stigmatization and promulgation of ethnic stereotypes.

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<sup>33</sup> Durban Declaration and Programme of Action, (2001), para.72.

<sup>34</sup> For example, then-Special Rapporteur on contemporary forms of racism Mutuma Ruteere submitted a report to the Human Rights Council in 2015 which indicated that racial profiling was commonly understood to mean a reliance by law enforcement, security and border control personnel on race, colour, descent or national or ethnic origin as a basis for subjecting persons to detailed searches, identity checks or investigations, or for determining whether an individual was engaged in criminal activity. See UN document: A/HRC/29/46, para. 2.

<sup>35</sup> Paragraph 15 of the Committee on the Elimination of Racial Discrimination’s General recommendation No.36 discusses definitions of racial profiling adopted by the Inter-American Commission on Human Rights, the Arab Human Rights Committee and the European Commission against Racism and Intolerance. See U.N. doc. CERD/C/GC/36, para.15.

<sup>36</sup> Durban Declaration and Programme of Action, (2001), para.72.

<sup>37</sup> The Committee on the Elimination of Racial Discrimination General Recommendation No.36, (2021), U.N. doc. CERD/C/GC/36, para.13.

<sup>38</sup> Ibid, paras.13, 21 & 23.

<sup>39</sup> Ibid, para.23.



29. The CERD, in General Recommendation No.36 has also emphasized that racial profiling has negative and cumulative effects on the attitudes and well-being of individuals and communities and detailed the systemic harms of racial profiling that can arise under the criminal justice system, including the overcriminalization of categories of people protected under ICERD; disproportionate incarceration rates amongst such groups; a heightened vulnerability to abuse of force or authority by law enforcement officials; the underreporting of racial discrimination and hate crimes; and the handing down by courts of harsher sentences against members of targeted communities.<sup>40</sup>
30. In their 2009 views in the case of *Williams Lecraft -v- Spain*, the Human Rights Committee found that in addition to being an unlawful practice and an affront to the dignity of the individual person targeted, racial profiling has an impact on societal-wide attitudes and policies addressing racial discrimination and can reinforce racial stereotypes:<sup>41</sup>
- “The Committee considers that identity checks carried out for public security or crime prevention purposes in general, or to control illegal immigration, serve a legitimate purpose. However, when the authorities carry out such checks, the physical or ethnic characteristics of the persons subjected thereto should not by themselves be deemed indicative of their possible illegal presence in the country. Nor should they be carried out in such a way as to target only persons with specific physical or ethnic characteristics. To act otherwise would not only negatively affect the dignity of the persons concerned, but would also contribute to the spread of xenophobic attitudes in the public at large and would run counter to an effective policy aimed at combating racial discrimination”*
31. The Human Rights Committee has also discussed racial profiling as a human rights violation often linked to a broader spectrum of police misconduct, including the excessive use of force, and systemic harms as a result discrimination within the criminal justice system, including the disproportionate representation of racial and ethnic groups within the prison population and low prosecution rates for hate crimes.<sup>42</sup> The Committee against Torture has similarly made links between racial profiling and broader harms within the context of law enforcement and criminal justice institutions.<sup>43</sup>
32. Additionally, the UN High Commissioner for Human Rights has drawn attention to the systemic nature of racial profiling. She has highlighted that laws and practices, such as civil asset forfeiture laws, can create economic incentives for racial profiling within society further entrenching such practices. She has also elucidated the link between racial profiling and systemic human rights violations within the criminal justice system, including disproportionate arrests and incarceration and harsher sentencing for those from affected racial and ethnic groups.<sup>44</sup>

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<sup>40</sup> Ibid, paras. 20, 27 and 30.

<sup>41</sup> See Human Rights Committee, Views: Communication No. 1493/2006, (2009), U.N. doc: CCPR/C/96/D/1493/2006. The State review processes of the Human Rights Committee also conceptualise racial profiling is a manifestation of systemic racism. See, for example, Human Rights Committee, List of Issues Prior to Reporting France, (2021), U.N. doc. CCPR/C/FRA/QPR/6, para.3.

<sup>42</sup> See Human Rights Committee concluding observations (various years) *inter alia* CCPR/C/DEU/CO/7; CCPR/C/USA/CO/4; CCPR/C/USA/CO/3/Rev.1; CCPR/C/RUS/CO/7; CCPR/C/AUS/CO/6; CCPR/C/NLD/CO/5; CCPR/C/FRA/CO/5; CCPR/C/RUS/CO/6; CCPR/C/HUN/CO/6; & CCPR/C/AUT/CO/5.

<sup>43</sup> See Committee on Torture concluding observations (various years) *inter alia* CAT/C/USA/CO/3-5; CAT/C/CPV/CO/1; CAT/C/ARG/CO/5-6; and CAT/C/NLD/CO/7.

<sup>44</sup> Report of the United Nations High Commissioner for Human Rights, (2021), U.N.doc. A/HRC/47/53, paras. 25 & 28.

33. Racial profiling can also constitute systemic racial discrimination because of the domino-effect of rights violations it causes and their far-reaching consequences. As established by a number of human rights mechanisms, including the CERD, racial profiling within law enforcement activities has significant and far-reaching effects on the lives of victims and results in the violation of many fundamental human rights.<sup>45</sup> The CERD has made clear that racial profiling, as well as being in contravention of the prohibition of racial discrimination under article 2 of ICERD and against the foundational principles of international law ICERD, violates the substantive right to equality before the law, as protected by article 5 of ICERD.<sup>46</sup> The CERD, in their General Comment No.36, explicates that racial profiling is incompatible with the non-discriminatory guarantee of other civil rights, such as the right to freedom of movement, guaranteed in article 5 (i,d) of ICERD.<sup>47</sup>
34. The CERD has also expressed concern that racial profiling is a violation of article 4 of ICERD,<sup>48</sup> which states, *inter alia*, that States parties: “[s]hall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.”<sup>49</sup>
35. The Human Rights Committee has echoed the interpretation of the CERD making clear in its findings in *Williams Lecraft -V- Spain* and its concluding observations that, in addition to contravening non-discrimination, as per article 2 of the ICCPR, racial profiling violates the right to freedom of movement, guaranteed by article 12 of the ICCPR and equality before the law, as per article 26 of the Covenant.<sup>50</sup> The Human Rights Committee has also elucidated that racial profiling can violate the rights to freedom from torture or to cruel, inhuman or degrading treatment or punishment, liberty and security of person, due process and a fair trial and privacy, as guaranteed by articles 7, 9, 14 and 17 of the ICCPR.<sup>51</sup>
36. The Committee on the Rights of the Child has additionally raised concerns about the use of stop and search powers amongst children being a violation of their privacy, as guaranteed by article 15 of the CRC.<sup>52</sup> Because of the far-reaching scope of the best

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<sup>45</sup> The Committee on the Elimination of Racial Discrimination General Recommendation No.36, (2021), U.N. doc. CERD/C/GC/36, paras.26-30.

<sup>46</sup> “In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (a) The right to equal treatment before the tribunals and all other organs administering justice; (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; . . . (d) Other civil rights[.]” Ibid, paras.21-23.

<sup>47</sup> Ibid, para.23.

<sup>48</sup> See Committee on the Elimination of Racial Discrimination, (various years) *inter alia* U.N: docs. CERD/C/DNK/CO/22-24; CERD/C/SGP/CO/1; CERD/C/THA/CO/4-8; CERD/C/CHE/CO/10-12; CERD/C/BEL/CO/20-22; CERD/C/IRL/CO/5-9; and CERD/C/JPN/CO/10-11.

<sup>49</sup> ICERD, article 4 (c).

<sup>50</sup> See Human Rights Committee concluding observations (various years) *inter alia* U.N: docs CCPR/C/DEU/CO/7; CCPR/C/BLR/CO/5; CCPR/C/HUN/CO/6; CCPR/C/USA/CO/4; CCPR/C/RUS/CO/7; CCPR/C/AUS/CO/6; & CCPR/C/GBR/CO/6.

<sup>51</sup> See Human Rights Committee concluding observations (various years) *inter alia* U.N. docs. CCPR/C/USA/CO/4; CCPR/C/RUS/CO/7; CCPR/C/AUT/CO/5; CCPR/C/NLD/CO/5; CCPR/C/NZL/CO/6; CCPR/C/FRA/CO/5; & CCPR/C/RUS/CO/6.

<sup>52</sup> See Committee on the Rights of the Child, Concluding Observations, (2016), U.N. doc. CRC/C/GBR/CO/5, paras. 37-38.

interests of the child under article 3 of the CRC, article 15 must be read in conjunction with article 3.<sup>53</sup>

37. As conceptualised as both an individual and a systemic violation, and as both a cause and consequence of broader societal and institutional racism, the existence of the practice of racial profiling can therefore amount to prohibited systemic racial discrimination under international human rights law. It can also be an indicator of other systemic forms of racial discrimination within society, which are also prohibited under international law.

**c. Racial Profiling in France Violates Obligations Under International Human Rights Law, including the Prohibition on Systemic Racism**

38. As a State party to the majority of the UN human rights treaties, including the ICERD and the ICCPR, France is bound by the obligations, described above, to uphold the prohibition of racial discrimination, including systemic discrimination, in international law, as well as to protect a range of human rights without discrimination. Despite such obligations, multiple UN human rights mechanisms, as well as regional and civil society organisations, have highlighted persistent and entrenched law enforcement practices within France that meet the definition of racial profiling and of systemic racial discrimination, outlined above.
39. In their 2015 concluding observations, the Human Rights Committee raised concern, in the context of broader concerns about police misconduct, about the persistence of the widespread practice of racially based identity checks in France.<sup>54</sup>
40. The recommendation of the Human Rights Committee in 2015 specifically on racial profiling was accompanied by concerns about the resurgence of racist and xenophobic discourse in both the public and political spheres and an upsurge in violent incidents of a racist, anti-Semitic or anti-Muslim nature.<sup>55</sup> In addition, the 2008 concluding observations of the Human Rights Committee addressed the mistreatment of non-nationals by law enforcement officials, the inadequate monitoring and investigations of misconduct of such officials and weaknesses in the legal recognition of the rights to non-discrimination and equality before the law.<sup>56</sup> Such concerns demonstrate systemic and institutional factors of relevance to the continued prevalence of racial profiling. The Human Rights Committee's 2021 List of Issues Prior to Reporting (LOIPR), which is designed to raise the key issues that should be addressed within the State party's periodic reporting about their adherence with their obligations under the ICCPR, included a question to the State party on racial profiling, highlighting continued concern about the issue. In this question, the Committee probed France about steps taken to combat all forms of systemic racial discrimination by

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<sup>53</sup> Article 3 of the CRC: "1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."

<sup>54</sup> Human Rights Committee, "Concluding observations France", (2015), U.N. doc. CCPR/C/FRA/CO/5. para. 15: *The Committee is concerned about allegations of ill-treatment, the excessive use of force and the disproportionate use of non-lethal weapons, especially during arrests, forced evictions and law enforcement operations. It is further concerned about continued racial profiling and allegations of police harassment, verbal abuse and abuse of power against migrants and asylum seekers in Calais (arts. 2 and 7).*"

<sup>55</sup> Ibid, para. 23

<sup>56</sup> Human Rights Committee, "Concluding observations France", (2008), U.N. doc. CCPR/C/FRA/CO/4, paras.11, 17 & 19.

the police and the measures taken to ensure that identity checks do not target racial, ethnic and religious minorities, do not target minors and are based on objective, individual suspicions.<sup>57</sup>

41. The CERD has also raised concerns about systemic and institutional factors contributing to racial profiling in France, in particular online and offline hate speech, including amongst politicians, and weaknesses in the legal framework governing hate crimes.<sup>58</sup>
42. During France’s second and third reviews by the Universal Periodic Review (UPR), in 2018 and 2013 respectively, multiple recommendations to address racial profiling were made by other UN Member States, which were all accepted—meaning that the French government acknowledged the validity and importance of these recommendations. Examples of the recommendations accepted, include:

*“Stop the abusive, humiliating and discriminatory practices of the police against people of African or Arab origin, victims of identity checks based on discriminatory ethnic profiling”*

*“Reinforce the national legislative framework and institutional mechanisms to combat all discriminatory practices based on racial, ethnic and religious profiling”<sup>59</sup>*

*“Ban explicitly the use of racial profiling in the conduction of identity checks”*

*“Take the necessary measures to stop malpractices by police officers, especially identity searches based on racial profiling of Muslims and people from Arab or African descent”<sup>60</sup>*

43. The UN High Commissioner for Human Rights, Michelle Bachelet, highlighted the issue of racial profiling in France within her 2021 annual report on racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action, stating:

*“In France, according to the results of a 2016 survey by the Defender of Rights, young men perceived as Arab/from the Maghreb or Black were 20 times more likely to be subjected to identity checks than others and reported facing significantly more insulting behaviour and physical abuse during police stops.”<sup>61</sup>*

44. Regional human rights bodies have similarly raised concerns about the practice of racial profiling in France, as well as a lack of access to effective remedies that guarantee non-repetition of violation. The European Commission against Racism and Intolerance has reported consistently on discriminatory identity checks amongst members of racial and ethnic groups for over twenty years. The Commission first raised concern about discriminatory police checks amongst racial and ethnic groups in their second monitoring report, published in 2000.<sup>62</sup> All their subsequent monitoring reports have raised racial profiling in the use of identity checks as a serious issue in France. In their two most recent monitoring reports, published in 2016 and 2010, the Commission raises concerns about the continued use of identity checks amongst members of racial and ethnic groups based

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<sup>57</sup> Human Rights Committee, “List of Issues Prior to Reporting France”, (2021), U.N.doc. CCPR/C/FRA/QPR/6, para.3.

<sup>58</sup> Committee on the Elimination of Racial Discrimination, “Concluding observations France”, (2015), U.N. doc CERD/C/FRA/CO/20-21, paras.7-8.

<sup>59</sup> Report of the Working Group on the Universal Periodic Review France, (2018), U.N. doc. A/HRC/38/4.

<sup>60</sup> Report of the Working Group on the Universal Periodic Review France, (2012), U.N. doc. A/HRC/23/3.

<sup>61</sup> Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officials, report of the United Nations High Commissioner for Human Rights, (2021), U.N.doc. A/HRC/47/53, para. 26.

<sup>62</sup> European Commission against Racism and Intolerance (ECRI), Second Report on France, (2000), para. 29.

on their appearance and in the absence of objective criteria. They highlight that the manner in which identity checks are conducted by the police can undermine relations with communities and risks causing civic unrest. In this regard, they highlight protests in Trappes in 2013 after an identity check of a woman in a full-face veil, and in various locations in 2015, after two minors in Clichy-sous-Bois were killed by electrocution after trying to hide in an electricity substation from police officers attempting to carry out an identity check. The Commission additionally raises issues relating to effective access to remedies for victims of racial profiling and related harms. It cites the acquittal of the police officers implicated in the death of the two minors in Clichy-sous-Bois in 2015, as well as other frequently encountered barriers to remedy, such as victims being discouraged by law enforcement officials from making full complaints, measures to identify police officers being ineffective and the lack of record keeping following identity checks.<sup>63</sup>

45. The Défenseur des Droits, the French National Human Rights Institution, undertook a large-scale survey on identity checks, which showed the disproportionate impact of such practices on young Black and Arab individuals, particularly males. The survey highlighted that such individuals were significantly more likely to be victims of police misconduct in the context of identity checks, including bullying and verbal harassment, and to have lower levels of trust in the police. The Défenseur des Droits has additionally highlighted a lack of access to remedies for victims, citing lack of trust in accountability mechanisms as the most significant reason for this. It has also echoed concerns raised by other human rights mechanisms about the lack of record keeping and traceability of identity checks, as well as the absence of statistics about the frequency and efficacy of such checks.<sup>64</sup>
46. There is significant commonality within the findings of different independent international, regional and national human rights bodies. They have highlighted the continued use of racial profiling in the administration by police of identity checks, with many reporting a particular targeting of young Black and Arab males, including those considered minors under French and international law. There is considerable consensus about both the long standing and deeply engrained nature of racial profiling in France, as well as the harms suffered by victims of such practices and the resulting low level of trust in police. Various human rights bodies have also described impunity for racial profiling, including an absence of access to effective remedies amongst victims. These reports indicate that France is in violation of its obligations under international law, as outlined in sections 3 a and b of this legal briefing, above.

#### **IV. FRANCE'S POSITIVE OBLIGATIONS UNDER INTERNATIONAL LAW TO ADDRESS AND ELIMINATE RACIAL PROFILING, AS A MANIFESTATION OF SYSTEMIC RACIAL DISCRIMINATION**

47. Following the above establishment of patterns of racial profiling in France, which violate its obligations under international law, including the *jus cogens* prohibition of racial discrimination, this brief will outline, in the following section, the positive obligation of France to address such human rights violations. It will, in section IV a, elucidate on the

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<sup>63</sup> European Commission against Racism and Intolerance (ECRI), Fourth and Fifth Reports on France (2016 and 2010).

<sup>64</sup> Défenseur des Droits, "Enquête sur l'accès aux droits Volume One : Relations police / population : le cas des contrôles d'identité", (2017).

general positive obligations of States to address human rights violations, before explicating that such obligations apply to racial discrimination and racial profiling. This briefing, in section V b, will conclude by presenting a non-exhaustive overview of the measures that have been recommended by UN human rights entities, which France should take in order to comply with its positive obligations to dismantle systemic racial discrimination, including racial profiling.

**a. International Human Rights Law Imposes Positive Obligations on States to Address Human Rights Violations Generally, and to Dismantle Systemic Racial Discrimination, Including Racial Profiling**

48. International human rights law imposes positive obligations on States to address human rights violations. Their obligations are not confined to the respect of human rights. By becoming party to international human rights treaties, States have also undertaken to take affirmative measures to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by States to enable individuals to enjoy their rights.<sup>65</sup>

49. The ICERD elucidates the duties of States to address and eliminate all forms of racial discrimination, including systemic racial discrimination, and makes clear that they involve both negative and positive obligations. Article 2 of the ICERD outlines that State parties, including France, have positive obligations to review policies, laws and regulations which perpetuate racial discrimination, as well as duties to legislative effectively in order to eliminate racial discrimination:

*“c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;*

*(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization.”*

50. Article 4 of ICERD calls for immediate positive measures to address discrimination or incitement to discrimination based upon the on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin:

*“States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention”*

51. Article 4 of ICERD explicates that the scope of positive measures should include upholding the impermissibility of public authorities or public institutions, national or local, promoting or inciting racial discrimination.<sup>66</sup>

52. Article 2(2) of ICERD outlines additional positive obligations of States by mandating the introduction of special and concrete measures when warranted by circumstances:

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<sup>65</sup> The Human Rights Committee, General comment No. 3: Article 2 (Implementation at the national level), (1981).

<sup>66</sup> ICERD, article 4 (c).

*“States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.”*

53. Article 6 of the ICERD conveys a duty to provide protection against racial discrimination and to ensure access to remedies for all acts of racial discrimination:

*“States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”*

54. In General Recommendation No. 36 the CERD explicitly applied the right to remedy under article 6 of ICERD to racial profiling:<sup>67</sup>

*“States parties are obliged to ensure that their domestic legal order contains adequate and effective mechanisms through which to assert that racial profiling has taken place and to bring such a practice to an end. States parties must furthermore guarantee the right to seek just and adequate reparation or satisfaction for damage suffered as a result of racial discrimination in the form of racial profiling. They must ensure that this right can be enforced in an effective manner.”*

55. The Human Rights Committee has also highlighted that ensuring effective remedies for racial profiling is necessitated by State’s parties’ obligations under the ICCPR, including article 2 (3)<sup>68</sup>, which guarantees the right to remedies for violations of rights under the Covenant.<sup>69</sup> In their findings in the case of *Williams Lecraft-v-Spain* the right to remedy was applied directly to the issue of racial profiling. As part of their consideration of the merits of the case, the Committee recognised the lack of satisfaction by way of apology as a remedy. Such a public apology was recommended by the Committee in their findings in that case.<sup>70</sup>

56. The guarantee of remedies for human rights violations in the context of racial profiling is derived from provisions in international human rights law, including article 6 of ICERD and article 2 (3) of the ICCPR. It is moreover an integral element of State parties’ obligations to uphold the prohibition of systemic racism. The CERD has highlighted that

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<sup>67</sup> The Committee on the Elimination of Racial Discrimination General Recommendation No.36, (2021), U.N. doc. CERD/C/GC/36, para.24.

<sup>68</sup> Article 2, 3 of ICCPR: *Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.*

<sup>69</sup> See Human Rights Committee concluding observations (various years) *inter alia* U.N. docs CCPR/C/JPN/CO/6; CCPR/C/RUS/CO/6; CCPR/C/FRA/CO/5; CCPR/C/AUT/CO/5; and CCPR/C/DEU/CO/7.

<sup>70</sup> Human Rights Committee, Views: Communication No. 1493/2006, (2009), U.N. doc. CCPR/C/96/D/1493/2006, paras.7 & 9.

when racial profiling systemically affects racial and ethnic groups, systemic remedies are necessary:<sup>71</sup>

*“In light of the fact that the practice of racial profiling regularly affects members of a particular group or groups, States parties are encouraged to consider establishing mechanisms for the collective enforcement of rights in the context of racial profiling.”*

57. The 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law reinforce the call to ensure collective enforcement of the right to remedies:<sup>72</sup>

*“In addition to individual access to justice, States should endeavour to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate.”*

58. The guidelines additionally set out five main elements of remedy and reparations for human rights violations: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The guidelines explicate that the principle of guarantee of non-repetition plays a part in preventing human rights violations. Guarantee of non-repetition has been interpreted as an obligation not only to ensure that individual victims do not suffer the same treatment again but also to systematically ensure through measures, such as legislation and training and awareness raising, that similar violations to others do not take place in the future.<sup>73</sup> The Human Rights Committee applied this principle to racial profiling in their consideration of merits in the case of *Williams Lecraft-V-Spain*, making clear that the State party:<sup>74</sup>

*“Is under an obligation to take all necessary steps to ensure that its officials do not repeat the kind of acts observed in this case”.*

59. A failure to adequately ensure effective remedies for victims of racial profiling, which guarantee non-repetition, can therefore be seen as a violation both of the substantive right to remedy, as established by *inter alia* article 6 of the ICERD and article 2 (3) of the ICCPR, as well as in contravention of the prohibition on systemic racial discrimination.
60. The CERD’s General recommendation No. 32 outlines that ICERD imposes both general positive obligations, spanning all the rights outlined in the Covenant, including those most relevant to racial profiling, as described above, as well as the positive obligation to introduce special measures when warranted by circumstances:

*“The obligation to take special measures is distinct from the general positive obligation of States parties to the Convention to secure human rights and fundamental freedoms on a non-discriminatory basis to persons and groups subject to their jurisdiction; this is a general obligation flowing from the provisions of the Convention as a whole and integral to all parts of the Convention.”<sup>75</sup>*

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<sup>71</sup> The Committee on the Elimination of Racial Discrimination General Recommendation No.36, (2021), U.N. doc. CERD/C/GC/36, para.24.

<sup>72</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, (2005) para.13

<sup>73</sup> William A Schabas, Nowak’s CCPR Commentary 3<sup>rd</sup> Revised Edition (2019), article 2 CCPR, para.85.

<sup>74</sup> Human Rights Committee, Views: Communication No. 1493/2006, (2009), U.N. doc. CCPR/C/96/D/1493/2006, para.9.

<sup>75</sup> The Committee on the Elimination of Racial Discrimination General Recommendation No.32, (2009), U.N.doc. CERD/C/GC/32, para.14.



61. General recommendation No. 36 of the CERD, elucidates that the positive obligations of States under ICERD and other international human rights provisions apply to addressing racial profiling:<sup>76</sup>

*“States parties are obliged to review their policies, laws and regulations with a view to ensuring that racial profiling does not take place and is not facilitated. States parties are obliged to actively take steps to eliminate discrimination through laws, policies and institutions.”*

62. In addition to the clearly established positive obligation to address racial discrimination, including racial profiling, as a manifestation of systemic racial discrimination, the Human Rights Committee has outlined the positive obligations of States in relation to rights in the ICCPR, stating in its General Comment No.34:<sup>77</sup>

*“The positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”*

63. The positive obligations to ensure the rights in the ICCPR extends to those, which it was established earlier in this legal briefing, can be violated in incidences of racial profiling, including *inter alia* those to freedom of movement, equality before the law, liberty and security and person, privacy and remedy.

**b. Concrete Measures France Must Take to Fulfil Positive Obligations to Dismantle Racial Profiling as a Manifestation of Systemic Racial Discrimination.**

64. According to its positive obligations under international law, France must take action to dismantle racial profiling as a manifestation of systemic racial discrimination. The UN human rights mechanisms provide guidance on the measures that France should take to fulfil these positive obligations under international law. What is required in France is comprehensive, effective reform of the institution of policing. The following is a non-exhaustive overview of key measures that France should take in order to dismantle systemic racism, including racial profiling.

***Community engagement and participation***

65. Communities subject to racial profiling possess a wealth of knowledge about the nature of systemic racial discrimination in law enforcement. States, including France, should acknowledge and treat these groups as high-level experts on what is required to dismantle systemic racial discrimination. The Special Rapporteur strongly recommends that France institutionalize mechanisms for robust input and decision-making by representatives of communities subject to racial profiling that amounts to systemic racial discrimination.

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<sup>76</sup> The Committee on the Elimination of Racial Discrimination General Recommendation No.36, (2021), U.N. doc. CERD/C/GC/36, para.23.

<sup>77</sup> The Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, (2004), U.N. doc CCPR/C/21/Rev.1/Add. 13, para.8.

66. Racially motivated identity checks often affect the same people multiple times. Moreover, these checks usually form part of a broader spectrum of racially motivated law enforcement activities. The impacts of these practices on affected communities are cumulative and as a result trust between them and law enforcement agencies can be low, as has been reported by multiple human rights bodies is the case in France.<sup>78</sup>
67. To address these “trust deficits”<sup>79</sup> France should build models of engagement with affected communities that enable their active and meaningful participation and representation in the development of relevant laws, policies and practices.<sup>80</sup> To facilitate effective engagement, France should build relationships with civil society organisations<sup>81</sup> but also, as recommended by the CERD, adopt dedicated and sensitive outreach efforts to reach those, including women and children, who may be underrepresented within community leadership organizations.<sup>82</sup>
68. Community engagement on issues relating to law enforcement in France should be grounded within the right to participation, as established by article 25 of the ICCPR. The Human Rights Committee has affirmed that article 25 of the ICCPR has a broad scope and applies to the formulation of policies on all aspects of public administrative at the national, regional and local level. The Committee has also recognised the right to direct participation through debate and dialogue and that State parties have an obligation to facilitate participation.<sup>83</sup> While the responsibility and accountability for taking decisions to dismantle systemic racism and racial profiling ultimately rests with the French public authorities, the participation of various sectors of society, particularly affected communities, allows authorities, including law enforcement bodies, to draw on their expertise, deepen their understanding of specific issues; helps to identify gaps, as well as available policy and legislative options and their impact on specific individuals and groups; and balances conflicting interests.<sup>84</sup>

### ***Strengthening the legislative and policy framework***

69. France must ensure that a formal and unequivocal prohibition against racial profiling is enshrined in national law, as part of broader efforts to put in place a robust anti-

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<sup>78</sup> Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, A/HRC/29/46, para.63; Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officials, report of the United Nations High Commissioner for Human Rights, (2021), U.N.doc. A/HRC/47/53, para.35.

<sup>79</sup> The UN High Commissioner for Human Rights has described trust deficits between law enforcement agencies and communities that are targeted by them on the basis of race and ethnicity. See U.N.doc. A/HRC/47/53, paras.24-35.

<sup>80</sup> Ibid, para.21.

<sup>81</sup> In Brazil a civil society organisation the Group against Institutional Racism was created in 2009. They collaborate with the local police force, including on providing training and capacity building, running a hotline for reporting racist crimes and public campaigns. See The UN Working Group on People of African Descent cited in United Nations, (2019), “Preventing and Countering Racial Profiling of People of African Descent”, page 18.

<sup>82</sup> Ibid, para. 21 and The Committee on the Elimination of Racial Discrimination General Recommendation No.36, (2021), U.N. doc. CERD/C/GC/36, para.48.

<sup>83</sup> Human Rights Committee General Comment No. 25 (57). (1996), U.N. doc. CCPR/C/21/Rev.1/Add.7. paras. 5, 6 & 8.

<sup>84</sup> OHCHR, Guidelines on the effective implementation on the right to participate in public affairs, (2018),

discrimination legislative framework.<sup>85</sup> France should endeavour to make certain that all components of the relevant legislative and policy frameworks governing law enforcement activities are grounded in international human rights standards and norms, as well as being harmonized with a formal prohibition of racial profiling.<sup>86</sup>

70. France should ensure that their legislative and policy frameworks contain precise guidance, based on objective criteria,<sup>87</sup> about the circumstances under which it is legal to stop and search individuals, including specific provisions relating to children.<sup>88</sup> This guidance should be in place to put reasonable limits on the discretionary powers of law enforcement officers, as well as to uphold the principle of legal certainty in relation to the circumstances under which individuals can be stopped and searched.<sup>89</sup> A lack of such legal certainty increases the risk of human rights violations in the context of policing and contributes to a culture of impunity.<sup>90</sup> The legislative and policy frameworks in place in France to comprehensively guard against racial profiling should be developed in consultation and dialogue with affected communities, in line with the right to participation, discussed above, as well as linked to measurable indicators of success and subject to independent review.<sup>91</sup>

### ***Law enforcement recruitment***

71. The composition and culture of law enforcement agencies has a profound impact on policing decisions. France should develop strategies to ensure that law enforcement agencies have diverse workforces, which are reflective of the populations they serve.<sup>92</sup> The

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<sup>85</sup> Committee on the Elimination of Racial Discrimination General Recommendation No.36, (2021), U.N. doc. CERD/C/GC/36; and Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, (2015), U.N.doc. A/HRC/29/46, para.36.

<sup>86</sup> Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officials, report of the United Nations High Commissioner for Human Rights, (2021), U.N.doc. A/HRC/47/53, para. 38.

<sup>87</sup> For example, In the Netherlands, revised guidelines were issued to the Dutch national police on how to select “suspect” persons and cars when carrying out identity controls, based upon guidelines on combating racism and racial discrimination in policing, issued by the European Commission against Racism and Intolerance in its general policy recommendation No 11 in 2007. The guidelines mandated that police officers explain the objective criteria used for each police control and make clear that the selection of suspicious people cannot be made on the basis of skin colour, descent and/or religion. See U.N. (2019), “Preventing and Countering Racial Profiling of People of African Descent”.

<sup>88</sup> The Committee on the Rights of the Child’s General Comment No.24 makes clear that States parties should enact legislation and ensure practices that safeguard children’s rights from the moment of contact with the criminal justice system, including at the stopping, warning or arrest stage. See U.N. doc. A/HRC/29/46, para.73

<sup>89</sup> In the United Kingdom of Great Britain and Northern Ireland, guidance has been published on permissible and non-permissible suspicion for police searches. The Police and Criminal Evidence Act 1984, as well as several codes of practice, regulate the exercise by police officers of their statutory powers to stop and search people. This legal framework stipulates that reasonable suspicion can never be supported by personal factors and makes clear that neither a person’s physical appearance, including their race, nor generalizations or stereotypes about certain groups or categories of people are reasonable grounds for suspicion. These provisions outline that reasonable grounds for suspicion should be linked to accurate and current intelligence or information. See U.N. (2019), “Preventing and Countering Racial Profiling of People of African Descent”.

<sup>90</sup> Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officials, report of the United Nations High Commissioner for Human Rights, (2021), U.N.doc. A/HRC/47/53, para.33.

<sup>91</sup> Committee on the Elimination of Racial Discrimination General Recommendation No.36, (2021), U.N. doc. CERD/C/GC/36, para.38; and Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officials, report of the United Nations High Commissioner for Human Rights, (2021), U.N.doc. A/HRC/47/53, para. 38.

<sup>92</sup> Committee on the Elimination of Racial Discrimination General Recommendation No.36, (2021), U.N. doc. CERD/C/GC/36, para.46.

policies and strategies that law enforcement agencies use to recruit and retain staff should be regularly evaluated and temporary special measures<sup>93</sup> to address the underrepresentation of those from racial, national and/or ethnic groups should be considered, when necessary.<sup>94</sup> Barriers to the entry to the police force, including low trust levels between racial and ethnic groups and the police, should also be proactively addressed.<sup>95</sup>

### ***Training and human rights education***

72. The sensitisation of law enforcement officials to relevant human rights standards, as well as the impact of discrimination in the context of law enforcement on victims, are essential components of implementing obligations to address systemic racism. France should develop specialised, mandatory training programmes for law enforcement officers, which are based upon human rights standards. The participation of affected individuals and communities in their development and delivery should be facilitated by France.
73. The training and education of French law enforcement officials should be continuous, and content should be regularly evaluated and updated, where necessary. Ensuring training materials are up to date should include keeping up with emerging technologies, including specifically in relation to any forms of algorithmic bias. National human rights institutions are well placed to take a leadership role in the training of law enforcement officials.<sup>96</sup>

### ***Eliminating hate speech and combating racial stereotyping***

74. France's duties to dismantle systemic racism and end racial profiling, include taking measures to combat hate speech and racist stereotypes.<sup>97</sup> The CERD found that racial profiling and hate speech are closely interrelated,<sup>98</sup> in that hate speech and stereotyping can lead to law enforcement racial profiling and profiling can in turn increase stigmatization and the promulgation of racial and ethnic stereotypes. A number of other UN human rights entities, including the UN High Commissioner for Human Rights and the Human

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<sup>93</sup> For example, in 2005 Sweden piloted the Spira project in the borough of Södertälje, Stockholm. The project was aimed at increasing racial and ethnic diversity within the police force. During the pilot phase, 140 applications were received from racial and ethnic minority groups and 17 individuals were recruited to civilian positions, with the expectation that they would later take on police officer roles. The project was subsequently rolled out to the rest of Stockholm, leading to 70 individuals from racial and ethnic minority groups being recruited. See U.N., *Preventing and Countering Racial Profiling of People of African Descent: Good Practices and Challenges*, (2019).

<sup>94</sup> The Committee on the Elimination of Racial Discrimination General Recommendation No.36, (2021), U.N. doc. CERD/C/GC/36 para.46.

<sup>95</sup> Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officials, report of the United Nations High Commissioner for Human Rights, (2021), U.N.doc. A/HRC/47/53, para.38.

<sup>96</sup> The Committee on the Elimination of Racial Discrimination General Recommendation No.36, (2021), U.N. doc. CERD/C/GC/36 paras.42-44.

<sup>97</sup> The State review of a number of parties, makes clear that provisions of ICERD, including article 2 and 7, are to be interpreted as including a duty to address discriminatory stereotypes. See, CERD Concluding Observations, (various years), *inter alia*, U.N. docs. CERD/C/SLV/CO/18-19; CERD/C/CUB/CO/19-21; CERD/C/MUS/CO/20-23; CERD/C/KGZ/CO/8-10; CERD/C/PER/CO/22-23; CERD/C/URY/CO/21-23; CERD/C/PER/CO/18-21; and CERD/C/SLV/CO/16-17.

<sup>98</sup> See the Committee on the Elimination of Racial Discrimination General recommendation No.36, (2021), U.N. doc. CERD/C/GC/36, para. 27.

Rights Committee, have also highlighted the interconnected and bidirectional relationship between racial profiling and race-based stereotypes.<sup>99</sup>

75. A number of harmful stereotypes, often fuelled by racist hate speech, contribute to racial profiling. Firstly, it is clear that the stereotype that people from certain racial and ethnic groups are more likely to be dangerous, and/associated with criminality, terrorism or delinquency contributes to racial profiling.<sup>100</sup> Secondly, ethno-nationalist ideologies, which associate irregular migration with belonging to racial and ethnic groups and are blind to the reality that many members of racial, ethnic or national groups have been legally territorially resident in France for generations and are central to the nation's prosperity.<sup>101</sup> The "adultification" of certain children, which relies on harmful and baseless stereotypes that those from ethnic and racial groups are older than they are and/or are less innocent than others of the same age, has also been implicated in cases involving the racial profiling of minors.<sup>102</sup>
76. France must, according to its obligations under international law, take steps to address all such stereotypes.<sup>103</sup> The UN human rights mechanisms have made a number of recommendations on how harmful stereotypes and unconscious bias, including those disseminated through hate speech, can be effectively addressed. Ensuring accountability for acts of hate speech and racism has been stressed by multiple human rights mechanisms as playing a vital role in addressing the vicious cycle of stereotyping and acts of racism, including profiling.<sup>104</sup> The robust criminalisation of hate speech and including racism as an aggravating factor within national penal codes, are also important elements of accountability.<sup>105</sup> Effective oversight and regulation of all media channels to identify and address racist hate speech, including online hate speech, has also been recommended by a number of UN human rights mechanisms.<sup>106</sup> It has also been recommended that political

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<sup>99</sup> Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officials, report of the United Nations High Commissioner for Human Rights, (2021), U.N.doc. A/HRC/47/53, para.31.

<sup>100</sup> Ibid, para.24.

<sup>101</sup> Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, (2018), U.N. doc. A/HRC/38/52, para.47. See also the views of the Human Rights Committee in the case of *Williams Lecraft -V- Spain*. The State party based their line of argumentation during national proceedings in the case on the notion that it was acceptable for police to base their decision to initiate an identity check against the complainant on the basis that it was reasonable to have a heightened suspicion that she was illegally within the State party because she was black. The Human Rights Committee decisively rejected this argument in their views. See Human Rights Committee, Views: Communication No. 1493/2006, (2009), U.N. doc. CCPR/C/96/D/1493/2006.

<sup>102</sup> Georgetown University Centre for Poverty and Inequality, 2007, "Girlhood Interrupted: The Erasure of Black Girls' Childhood"; and findings of the UK Local Child Safeguarding Practice Review, 2022, in the case of child Q, paras. 5.71-5.73. The latter is a review of a case of the racial profiling of a black teenage girl in London, which has sparked multiple protests, in which adultification bias was implicated as a significant factor.

<sup>103</sup> Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officials, report of the United Nations High Commissioner for Human Rights, (2021), U.N.doc. A/HRC/47/53, paras.33 and 38.

<sup>104</sup> Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officials, report of the United Nations High Commissioner for Human Rights, (2021), U.N.doc. A/HRC/47/53, para.38.

<sup>105</sup> Committee on the Elimination of Racial Discrimination concluding observations, *inter alia* U.N. docs. CERD/C/THA/CO/4-8; CERD/C/SGP/CO/1; CERD/C/POL/CO/22-24; CERD/C/LBN/CO/23-24; CERD/C/IRL/CO/5-9; CERD/C/COL/CO/17-19 and the Human Rights Committee concluding observations *inter alia* U.N. docs. CCPR/C/UKR/CO/8; CCPR/C/ARM/CO/3; CCPR/C/BEL/CO/6; and CCPR/C/EST/CO/4.

<sup>106</sup> Committee on the Elimination of Racial Discrimination concluding observations *inter alia* U.N. docs. CERD/C/THA/CO/4-8; CERD/C/LBN/CO/23-24; CERD/C/BEL/CO/20-22; CERD/C/IRL/CO/5-9; and

leaders and high-ranking law enforcement officials speak out publicly against racial and ethnic discrimination and refrain from any kind of statements linking race or ethnicity to criminality, irregular migration and/or terrorism.<sup>107</sup> In relation to how stereotyping impacts the conduct of police officers, the UN High Commissioner for Human Rights has stressed that States should address unconscious biases through vigorous operational policies and continuous training and education.<sup>108</sup>

### ***Disaggregated data collection***

77. The collection and monitoring of law enforcement data, including statistics disaggregated by ethnicity and race, and other factors, as well as qualitative data about the lived experiences of affected individuals, are essential to understanding and addressing the extent of racial profiling in France.<sup>109</sup> The collection of such data is a vital tool in detecting law enforcement practices that contravene international human rights law<sup>110</sup> and France should take action to develop effective disaggregated data systems. Data collection and ensuring the traceability of identity controls can be a central component of accountability for such violations.<sup>111</sup>
78. Effective oversight of the collection, storage and access to data is required to prevent any possible misuse of data. Data protection standards and strict safeguards, grounded in the right to privacy as enshrined by article 17 of the ICCPR, as well as other relevant human rights standards and the recommendations made by human rights mechanisms, such as the Working Group on People of African Descent<sup>112</sup> and the mandate of the Special

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CERD/C/POL/CO/22-24. See also the Human Rights Committee concluding observations *inter alia* U.N. docs. CCPR/C/CZE/CO/4; CCPR/C/FIN/CO/7; CCPR/C/PRT/CO/5; CCPR/C/NLD/CO/5; CCPR/C/BGR/CO/4; CCPR/C/LTU/CO/4; and CCPR/C/NUK/CO/7.

<sup>107</sup> Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, (2015), A/HRC/29/46, para. 67.

<sup>108</sup> Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officials, report of the United Nations High Commissioner for Human Rights, (2021), U.N.doc. A/HRC/47/53, para.38.

<sup>109</sup> Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officials, report of the United Nations High Commissioner for Human Rights, (2021), U.N.doc. A/HRC/47/53, para. 20. The Committee on the Elimination of Racial Discrimination General Recommendation No.36, (2021), U.N. doc. CERD/C/GC/36, para. 50.

<sup>110</sup> For example, In the United Kingdom of Great Britain and Northern Ireland, a police force in Hertfordshire implemented reforms in 2007-2008. These reforms following the collection data showing that people of African descent were five times more likely to be stopped and searched than other groups within the population served by the police force. The new reforms implemented included the introduction of software that was programmed to identify individual officers who stopped members of racial and ethnic groups substantially more often than could be expected. Officers flagged for high rates of racially motivated profiling were subjected to managerial oversight, including interviewing them to identify gaps in their understanding of what constituted appropriate grounds for conducting stopping and searching. Under the programme, officers were monitored on a monthly basis and their supervisors were expected to report back with recommendations for action and training. As a result, the rates of stop and searches amongst those of African descent decreased. See U.N. Preventing and Countering Racial Profiling of People of African Descent: Good Practices and Challenges, (2019).

<sup>111</sup> Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, (2015), A/HRC/29/46, para.68; Committee on the Elimination of Racial Discrimination concluding observations (various years) *inter alia* U.N. docs. CERD/C/DNK/CO/22-24; CERD/C/BEL/CO/20-27; CERD/C/IRL/CO/5-9; CERD/C/CHN/CO/14-17; and CERD/C/CHN/CO/21-27.

<sup>112</sup> Report of the Working Group of Experts on People of African Descent on its twenty-third and twenty-fourth Sessions, data for racial justice, (2019), U.N.doc. A/HRC/42/59, paras. 71-76, 83-84, 91, 97 and 99.

Rapporteur on Contemporary Forms of Racism,<sup>113</sup> are essential to France's development of tools to effectively monitor law enforcement activities.

79. Anonymized data on police conduct, including racial profiling, should be made publicly available by France in order to encourage transparency and public accountability for the conduct of police officers. Such data should be shared and discussed with affected communities, as part of overall engagement and participation practices.<sup>114</sup>
80. France must guard against any discriminatory secondary effects of their data collection efforts. Even where discrimination is not intended, indirect discrimination can result from using innocuous and genuinely relevant criteria. The use of and reliance on predictive models that incorporate historical data, including in law enforcement contexts, can often reflect discriminatory biases. States must proactively mitigate the risk of such discriminatory effects in the design of data usage protocols.<sup>115</sup>

### ***Accountability and access to remedies for victims***

81. Ensuring accountability for police conduct is central to addressing systemic racism in the context of law enforcement. France should adopt internal accountability mechanisms, such as internal auditing,<sup>116</sup> which monitor the use of the powers of police officers, including in relation to stop and search. France should develop protocols that capture and monitor individual police conduct to ensure internal accountability. The absence of such data can give rise to impunity and can be an impediment to access to remedies for victims. France should also take steps to develop independent, impartial and accessible complaints and oversight mechanisms. Such complaint mechanisms should be independent of law enforcement and have the competence and resources to promptly and effectively work to investigate allegations. Such bodies should be trained on racial justice considerations and empowered to refer cases to other authorities, as appropriate, including criminal prosecutors when the conduct of law enforcement officials warrants such action.<sup>117</sup> In

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<sup>113</sup> Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, (2015), A/HRC/29/46, para.68.

<sup>114</sup> Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officials, report of the United Nations High Commissioner for Human Rights, (2021), U.N.doc. A/HRC/47/53, para. 20; The Committee on the Elimination of Racial Discrimination General Recommendation No.36, (2021), U.N. doc. CERD/C/GC/36, para.50; Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, (2015), U.N.doc. A/HRC/29/46, para.68.

<sup>115</sup> The Committee on the Elimination of Racial Discrimination General Recommendation No.36, (2021), U.N. doc. CERD/C/GC/36, paras.50-51; Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance emerging digital technologies: a human rights analysis: (2020), U.N. doc. A/HRC/44/57, para.8; and Report of the Special Rapporteur on human contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, (2015), U.N.doc. A/HRC/29/46, para.68.

<sup>116</sup> For example, in 2012 the Toronto Police Service developed an internal auditing and early warning system to detect patterns of possible bias amongst individual officers. See U.N. Preventing and Countering Racial Profiling of People of African Descent: Good Practices and Challenges, 2019.

<sup>117</sup> The Committee on the Elimination of Racial Discrimination General Recommendation No.36, (2021), U.N. doc. CERD/C/GC/36, paras. 52-57; and Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officials, report of the United Nations High Commissioner for Human Rights, (2021), U.N.doc. A/HRC/47/53, para.40.

cases of criminal prosecution, the penalties awarded to perpetrators should be appropriate and proportional to the gravity of the offence and harm caused.<sup>118</sup>

82. Whilst effective criminal prosecution is essential, particularly in cases where racial profiling has escalated to other forms of police misconduct, including the excessive and/or lethal use of force, additional measures are required to comprehensively uphold the right to remedy. Several human rights mechanisms have also stressed the importance of compensation that is proportionate to the harm caused,<sup>119</sup> truth telling and public apology<sup>120</sup> and providing rehabilitation support services to victims, as appropriate.<sup>121</sup> France should take concrete steps to ensure that victims of racial profiling have access to such forms of remedies. Moreover, France should take systemic preventative measures, such as those recommended by different human rights mechanisms, as described in the sub-sections above, to comprehensively address the causal factors of racial profiling in order to ensure guarantee of non-repetition of such violations.

## V. CONCLUSIONS

83. Racial profiling is simultaneously a cause and a consequence of systemic racism. Such practices do not exist in a vacuum and their continued prevalence within France can be seen as a reflective of the persistence of systemic societal racism.
84. The continuation of racial profiling and racist systems which perpetuate it is in clear contravention of France's obligations under international human rights law to prohibit racial discrimination.
85. There is a clear legal and moral imperative for France, as a State party to almost all the core human rights treaties, to take concrete and decisive steps to eliminate racial profiling, as part of broader efforts to dismantle systemic racism across all sectors of French society. As has been summarised in the above brief, the UN human rights mechanisms provide detailed guidance and recommendations on the measures States, including France, can take to uphold relevant commitments under international law and provide adequate, systemic remedies for racialized human rights violations.

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<sup>118</sup> The Committee on the Elimination of Racial Discrimination General Recommendation No.36, (2021), U.N. doc. CERD/C/GC/36, para.54. The Human Rights Committee has stressed the need for proportionate penalties for violations by state officials. See Human Rights Committee, concluding observations, (various years), *inter alia* CCPR/C/CRI/CO/6; CCPR/C/KEN/4; CCPR/C/SEN/CO/5; CCPR/C/MEX/CO/6; CCPR/C/GNG/CO/1; and CCPR/C/AGO/CO/2.

<sup>119</sup> The Committee on the Elimination of Racial Discrimination General Recommendation No.36, (2021), U.N. doc. CERD/C/GC/36, para.54; and Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officials, report of the United Nations High Commissioner for Human Rights, (2021), U.N.doc. A/HRC/47/53, para.43.

<sup>120</sup> Human Rights Committee, Views: Communication No. 1493/2006, (2009), U.N. doc: CCPR/C/96/D/1493/2006; and William A Schabas, Nowak's CCPR Commentary 3rd Revised Edition (2019), article 2 CCPR, para.84.

<sup>121</sup> William A Schabas, Nowak's CCPR Commentary 3rd Revised Edition (2019), article 2 CCPR, para.83. The Human Rights Committee have repeatedly recommended that State parties facilitate access to rehabilitation amongst victims of ill treatment by State officials. See Human Rights Committee, concluding observations, (various years), *inter alia* CCPR/C/CAF/CO/3; CCPR/C/VNM/CO/3; CCPR/C/TJK/CO/3; CCPR/C/NER/CO/2; and CCPR/C/ERI/CO/1; CCPR/C/EST/CO/4.