

Collecting Ethnic Data: An Old Dilemma, The New Challenges

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Introduction

Sound minority policy must be based upon accurate information related to minority populations. Without a clear picture of a minority community's situation, governments can develop policy only obliquely, and run the risk of adopting programmes that are irrelevant or even detrimental to both the minority for whom policies are adopted and for society as a whole. Comprehensive statistical data is essential to gaining insight to the situation of minorities, to infer basic information such as the size of the minority population, its demographic composition, and the socio-economic situation of the minority *vis-à-vis* the rest. Nevertheless, such data are often unavailable. Some minority representatives, fearing a loss of privacy or even persecution, advocate against the collection of such data. [1] Governments, wary of charges of discrimination or abuse, often all too willingly defer to the wishes of minorities to remain unidentified, and do not collect or analyse data on the basis of national origin, ethnicity, mother tongue, or other minority markers. [2] The polarity of positions often dims the possibility of compromise: reliable ethnic data could be obtained and protected from abuse, but the involvement of minorities themselves in data collection process is key to ensuring their interests are respected.

International experience and standards on data collection

The potential abuse of personal data remains a powerful caution to both governments and citizens in the process of data collection. Under the Fascist regimes of the World War II era, governmental records of national origin and descent were used to persecute Jews, Roma, and other groups. In another more recent context, the legacy of colonial administration in Rwanda established distinctions between Hutu and Tutsi that were previously considered insignificant, and identification cards bearing the holder's ethnicity were used to single out victims in the 1994 genocide. [3]

In order to address valid concerns about the security of personal data, international organisations have elaborated a number of instruments aimed at protecting personal privacy. The right to privacy is set out in both the Universal Declaration of Human Rights (Art. 12) and the International Covenant on Civil and Political Rights (Art. 17). The UN has further issued guidelines on the protection of computerised data files that provides, "Subject to cases of exceptions restrictively envisaged under principle 6, data likely to give rise to unlawful or arbitrary discrimination, including information on racial or ethnic origin, colour [...], should not be compiled." [4]

The Organisation for Economic Cooperation and Development (OECD) has also adopted recommendations on Guidelines Governing the Protection of Data and Privacy and Transborder flows of Personal Data. [5] At the regional level, the European Convention on Human Rights also recognises a right to privacy in Article 8, which the Council of Europe (CoE) has supplemented by elaborating a Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. The CoE Convention permits the collection of information on racial or ethnic origin, but prohibits automated storage, alteration, erasure, retrieval, or dissemination of that data. [6] It has so far been ratified by 30 European States. The European Union itself has adopted Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, which must be transposed into domestic law by member States. [7]

National practices

All international instruments leave domestic legislation broad discretion to develop procedures and implement standards for the protection of personal data. In many countries the collection of ethnic data is prohibited in the Constitution or supporting legislation, yet actual practices vary widely.

For example, in Germany the authorities regularly refer to the decision of the Federal Constitutional Court banning the collection of ethnic data when explaining the lack of any official data on the situation of the Sinti and Roma minority. [8] France presents another extreme: the proclaimed unitary character of the Republic does not accommodate the notion of a "minority," and accordingly no ethnic data collection is authorised. [9] In Central and Eastern Europe, the practice of recording "nationality" has persisted in some countries, [10] although such identification is optional, and under-counting of minorities remains common. [11] Questions regarding self-identification and perception of minority status are highly sensitive, as demonstrated by recent controversies over the Hungarian "Status Law," granting privileges within Hungary to ethnic Hungarians from other States. [12]

Reports by international monitoring bodies at the same time indicate that even where not permitted by law, law enforcement institutions sometimes circumvent the prohibitions. Thus, criminal statistics often include references to ethnicity, a practice the relevant authorities have done little to discourage. [\[13\]](#) Such practices give rise to suspicions among minority communities that data collection in general is not in their interests, and can inhibit the conduct of surveys even with adequate safeguards. Romani representatives in particular have called for authorities to put a stop to the practice of including ethnic data in criminal records, noting that such collection of data is often illicit, and serves only to perpetuate damaging ethnic stereotypes. [\[14\]](#)

Emerging issues

While voicing criticism of select domestic practices on data collection, international organisations seeking to improve the situation of Roma and other minorities advocate the collection of comprehensive statistical information, including ethnic data, as a prerequisite to informed and sound policy-making. [\[15\]](#) NGOs have also called attention to the fact that a lack of data can provide a pretext for Governments to minimise the extent of discrimination in society. [\[16\]](#)

Recent EUMAP reports on selected EU member States demonstrate that policies to combat discrimination may be handicapped by a lack of statistical material. For example, a report focusing on the situation of Muslims in the European Union draws attention to the fact that even where Governments do compile detailed statistics on the population, the categories established may not adequately represent the situation of religious minorities. [\[17\]](#)

The UK has an advanced anti-discrimination framework in place, providing for gathering data on the basis of ethnicity and race. However, statistics are not collected on the basis of religion. The Muslim community does not coincide either with one specific racial or ethnic or language or national group, and thus through ethnic data alone the needs of religious communities become obscured. The lack of data about the experience of Muslims in the UK is identified as the “biggest obstacle” to developing policies and ensuring service delivery appropriate to Muslim communities. [\[18\]](#)

The EUMAP report on the UK concludes: “Before policy options targeted to assist Muslim communities can be developed, there is a need to build up solid baseline information about Muslim communities. [\[19\]](#) With regard to Italy, the EUMAP report’s recommendation stipulates: “Generate data to facilitate differentiated assessment of levels of discrimination and exclusion against different ethnic and religious groups. [\[20\]](#) A recommendation for France reiterates the above conclusions: “Establish a central body to conduct research and monitoring of all forms of discrimination ... on an ongoing basis, including through the collection of statistical data on the basis of religious affiliation, while ensuring adequate protection of privacy and personal data.” [\[21\]](#)

Furthermore, the EU’s Race Equality Directive expressly permits the introduction of statistical evidence to establish cases of indirect discrimination. [\[22\]](#) and experts advocate for ethnic statistics as a potent instrument for challenging discriminatory practices in courts. [\[23\]](#)

Conclusion

Broad agreement on the need for and appropriate use of ethnic data has yet to be reached. International standards set out guidelines for the collection and protection of personal data. Involvement of minorities themselves in all aspects of data collection is one crucial means of addressing some of the inherent problems of ethnic data collection and ensuring safety and proper utilisation of such data for developing and implementing sound minority policies.

However, discussion on this subject cannot be limited to select minority and governmental positions; a more inclusive social debate is called for to re-examine the issue with both the lessons of the past and the considerations of the future in mind.

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Footnotes

[\[1\]](#) This position was summarised in Council of Europe, Roma and Statistics, Strasbourg, 22-23 May 2000, p. 10, (hereafter, *Roma and Statistics*).

[\[2\]](#) For example, the German Government expressly refers to constitutional prohibition on collecting ethnic data. See, Report submitted by the German Government to the Advisory Committee on Implementation of the Framework Convention on National Minorities, 1999, p. 10

- [3] See Amnesty International, “Rwanda: Mass murder by government supporters and troops in April and May 1994,” Section 2:1, available here: <http://www.amnesty.org/ailib/aipub/1994/AFR/471194.AFR.txt> (accessed 26 March 2003).
- [4] United Nations guidelines concerning computerised personal data files, adopted by the General Assembly on 14 December 1990, Art. 5. Principle of non-discrimination, available here: http://europa.eu.int/comm/internal_market/privacy/instruments/un_en.htm (accessed 26 March 2003).
- [5] Organisation for Economic Co-operation and Development Recommendation of the Council concerning guidelines governing the protection of privacy and transborder flows of personal data, adopted by the Council on 23 September 1980, available here: http://europa.eu.int/comm/internal_market/privacy/instruments/ocdeguideline_en.htm (accessed 24 March 2003).
- [6] Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Strasbourg, 28 January 1981, Art. 6, available here: <http://conventions.coe.int/Treaty/EN/Treaties/Html/108.htm> (accessed 26 March 2003).
- [7] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, *Official Journal L* 281, 23/11/1995 P. 0031-0050. Available here: europa.eu.int/.
- [8] See e.g. Report submitted by the German Government to the Advisory Committee on Implementation of the Framework Convention on National Minorities, 1999. The general ban however had not prevented the Bavarian authorities from racial profiling of specifically Sinti and Roma on police forms up until October 2001. See generally, EU Accession Monitoring Program, *Minority Protection Volume II: The Situation of Sinti and Roma in Germany*, Budapest: Open Society Institute, 2002, available here: <http://www.eumap.org/reports>.
- [9] See generally, EU Accession Monitoring Program, *Minority Protection Volume II: The Situation of Muslims in France*, Budapest: Open Society Institute, 2002, available here: <http://www.eumap.org/reports>.
- [10] *Roma and Statistics*, p. 10.
- [11] *Roma and Statistics*, p. 18.
- [12] See, e.g. BBC News, 27 March 2002, available here: <http://news.bbc.co.uk/1/hi/world/europe/1896641.stm>.
- [13] See, e.g. Council of Europe Advisory Committee on the FCNM, *Opinion on Slovakia*, Strasbourg, 2001, para. 14.
- [14] *Roma and Statistics*, p. 5.
- [15] *Roma and Statistics*, p. 10.
- [16] EU Accession Monitoring Program, *Minority Protection Volume II: The Situation of Muslims in the UK*, Budapest: Open Society Institute, 2002, p. 45, available here: <http://www.eumap.org/reports>.
- [17] See generally, EU Accession Monitoring Program, *Minority Protection Volume II: The Situation of Muslims in the UK*, Budapest: Open Society Institute, 2002, available here: <http://www.eumap.org/reports>.
- [18] See EU Accession Monitoring Program, *Minority Protection Volume II: The Situation of Muslims in the UK*, Budapest: Open Society Institute, 2002, p. 106, available here: <http://www.eumap.org/reports>.
- [19] EU Accession Monitoring Program, *Minority Protection Volume II: The Situation of Muslims in Italy*, Budapest: Open Society Institute, 2002, p. 280, available here: <http://www.eumap.org/reports>.
- [20] EU Accession Monitoring Program, *Minority Protection Volume II: The Situation of Muslims in the UK*, Budapest: Open Society Institute, 2002, p. 280, available here: <http://www.eumap.org/reports>.
- [21] EU Accession Monitoring Program, *Minority Protection Volume II: The Situation of Muslims in the UK*, Budapest: Open Society Institute, 2002, p. 139, available here: <http://www.eumap.org/reports>.
- [22] Council Directive 2000/43/EC, 29 June 2000, para. 15.
- [23] *Roma and Statistics*, p. 8.