ANTIDISCRIMINATION, ETHNIC STATISTICS AND DATA PROTECTION IN EUROPE

Patrick Simon INED

Ethnic Data: a tool to combat discrimination
Pavee Point – Dublin, 26/03/2014
The EU Race Directive (2000/43) and the antidiscrimination agenda

- Moving from *formal equality* to *effective equality* or equity: positive action as the second generation of rights

- Transposed in all State members’ domestic laws, but there are **large implementation gaps**

- Creation of “equality bodies” addressing all motives in a “one size fits all”

- Comprehensive protection for a wider list of grounds: race and ethnicity, but also age, sexual preferences, disability and religion
  - The “horizontal directive” still in the blue

- Statistics are not explicitly required to support positive action in the directives
(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
Non discrimination in the Framework Convention

- Article 4
  1 The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.
  2 The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

- Article 5
  1 The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.
  2 Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.
What’s new with the anti-discrimination paradigm?

- Indirect discrimination or systemic discrimination refer to group, or more precisely to CATEGORIES, which are exposed to stereotyping, prejudice and thus unfair treatment (comparison and assessment)

- Protection of National Minorities (Framework Convention) relies on a *substantive* approach of ethnicity (language, culture, political rights)

- Most if not all Human Rights and Equality international bodies ask for more statistical data collection (CERD, ECRI, FRA, etc)
Key concepts in Antidiscrimination policies

- Going beyond intentional discrimination, discrimination is detected by its consequences: *disparate or adverse impact or treatment*
- Screening selection processes, practices, formal and informal procedures to identify biases based on protected criteria
- Duty to promote equality and accountability for equal treatment
- Outreach
- Reasonable accommodation
- under-representation, uneven distribution, disparities, proportionality
The use of statistical monitoring

- Statistics provide facts on discrimination: they make visible the invisible
- Awareness raising in public opinion and decision makers
- Measuring the extent and impact of discrimination
- Identifying targets, setting goals, evaluating policies
- Equality policies: monitoring is not only a tool, but the policy itself
- Providing evidence in courts
- Implementing diversity management
Why statistics a sensitive issue?

- Statistics reflect and emphasize the diversity of the population: a threat to unity.
- Statistics can be used to reveal discrimination or to discriminate.
- Reification of identities through categorization and data collection.
- Statistics collection use a huge engineering of categories, questionnaire, files, which bring race and ethnicity at the heart of everyday life.
The challenges of data collection and statistics on « ethnicity and race »

Politics and policies: recognising internal diversity and targeting ethno-racial groups

Legal: human rights and data protection

Methodological: definitions of « ethnicity » and « race », accuracy and reliability
Data protection : normative references

- Convention ETS 108 (1981), ratified by 38 countries of CoE
- National adaptations
- Laws on statistics
Principles for data collection

- Data must be collected fairly
- For specified and legitimate purpose
- Adequate, relevant, not excessive and accurate
- Specific rules for “sensitive data”
**Convention ETS 108 Article 6 - Special categories of data**

Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions.

**Directive 95/46/EC Article 8 – The Processing of special categories of data**

1. Member States shall prohibit the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life.
“Special categories of data”

- No definition of what covers “data revealing racial or ethnic origin”. The survey shows that no national laws provide definition of “ethnicity” or “ethnic affiliation”.
- A prohibition with exception ("unless") or a conditionnal authorization.
- Special protection to avoid misuses and dissemination of sensitive data.
Exemptions to the prohibition

- Prior check: a power given to the data protection authority
- Explicit consent, vital interest, Public interest, legal provisions, security reasons
- Legal provisions may derive from antidiscrimination laws or may fall under the protection of national minorities
- Authorizations may be given case by case or in a general agreement
- Accommodation in census taking: sensitive questions are optional, whereas answering is mandatory
Conclusions on data protection and ethnic statistics

- Prohibition to collect « ethnic data » is a political choice, not a legal challenge.
- It should be possible to find a compromise between information on sensitive issues and a high level of privacy and protection for the individuals.
- Legal incentives should be given in antidiscrimination laws to collect data.
- A standardisation of what is meant by ethnic data could be developed at an international level (Eurostat for the EU, Population division for the UN), but no statistical referential.
Categorisation

- Foreigners and immigrants: place of birth or/and citizenship
- Second generation: origin of the parents
- Minorities: Ethnic affiliation, “nationality”, ethnic or racial group, colour, language, religion
Ethnic and racial classifications

- For policy purpose, categories can be specified by laws and policies:
  - guidelines and standards, CRE, UK
  - standards of classification, OMB, US
  - list of visible minorities in the Employment equity law, Canada
  - Definition of “non Western allochtons” in the Dutch antidiscrimination law

- In censuses:
  - huge disparities of categorisation in a cross-national perspective
  - Ethnicity and race are optional topics, conversely to citizenship and place of birth
  - Each country have its own list of categories: a reflection of the history (slavery, colonisation, immigration, national minorities), the composition of the population and the political model of integration
Recommandations of UN for the 2010 census round (2nd revision 2006)

- “Ethnicity can be measured using a variety of concepts, including ethnic ancestry or origin, ethnic identity, cultural origins, nationality, race, colour, minority status, tribe, language, religion or various combinations of these concepts. (…) The subjective nature of the term (not to mention increasing intermarriage among various groups in some countries, for example) requires that information on ethnicity be acquired through self-declaration of a respondent and also that respondents have the option of indicating multiple ethnic affiliations.”
Ethnicity and Race in Census around 2000

- 87 countries in 138 are collecting data on « ethnicity » (A.Morning, 2008)

- Most common terminology (a selection):
  - Ethnicity 49
  - Nationality 20
  - Race 13
  - Color 2
  - Ancestry/origin 6

- In 42 countries of the Council of Europe, ethnicity/nationality is collected in 22 countries, religion in 24 and country of birth of the parents in 6 (Simon, 2007).
Methods of collection

- **Self-declaration**
  - Open question (11 countries)
  - Pre-coded list of categories (11 countries)

- **Third party identification**
  - Employers in the US (until 2008)
  - Claims from Roma organisations in central and east Europe

- **Group recognition**

- **By proxy**
  - Country of birth and citizenship of parents Sweden, Norway, Denmark, The Netherlands), spoken or mother language, name and surname
What is your ethnic or cultural background?

Choose ONE section from A to D, then ☐ the appropriate box.

A White
1 ☐ Irish
2 ☐ Irish Traveller
3 ☐ Any other White background

B Black or Black Irish
4 ☐ African
5 ☐ Any other Black background

C Asian or Asian Irish
6 ☐ Chinese
7 ☐ Any other Asian background

D Other, including mixed background
8 ☐ Other, write in description
<table>
<thead>
<tr>
<th>Ethnic or Cultural Background</th>
<th>Count</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>White Irish</td>
<td>3821995</td>
<td>84.5%</td>
</tr>
<tr>
<td>White Irish Traveller</td>
<td>29495</td>
<td>0.7%</td>
</tr>
<tr>
<td>Any other White background</td>
<td>412975</td>
<td>9.1%</td>
</tr>
<tr>
<td>Black or Black Irish - African</td>
<td>58697</td>
<td>1.3%</td>
</tr>
<tr>
<td>Black or Black Irish - any other Black background</td>
<td>6381</td>
<td>0.1%</td>
</tr>
<tr>
<td>Asian or Asian Irish - Chinese</td>
<td>17832</td>
<td>0.4%</td>
</tr>
<tr>
<td>Asian or Asian Irish - any other Asian background</td>
<td>66858</td>
<td>1.5%</td>
</tr>
<tr>
<td>Other including mixed background</td>
<td>40724</td>
<td>0.9%</td>
</tr>
<tr>
<td>Not stated</td>
<td>70324</td>
<td>1.6%</td>
</tr>
<tr>
<td>All ethnic or cultural backgrounds</td>
<td>4525281</td>
<td>100.0%</td>
</tr>
</tbody>
</table>
Figure 31 Ethnic or cultural background by social class

- Irish
- Irish Traveller
- Any other white background
- African
- Any other black background
- Chinese
- Any other Asian background
- Other

Legend:
1. Professional workers
2. Managerial and technical
3. Non-manual
4. Skilled manual
5. Semi-skilled
6. Unskilled
7. All others incl. unknown

%
What is your ethnic group?

Choose one section from A to E, then tick one box to best describe your ethnic group or background

A  White
   - English / Welsh / Scottish / Northern Irish / British
   - Irish
   - Gypsy or Irish Traveller
   - Any other White background, write in

B  Mixed / multiple ethnic groups
   - White and Black Caribbean
   - White and Black African
   - White and Asian
   - Any other Mixed/multiple ethnic background, write in

C  Asian / Asian British
   - Indian
   - Pakistani
   - Bangladeshi
   - Chinese
   - Any other Asian background, write in

D  Black / African / Caribbean / Black British
   - African
   - Caribbean
   - Any other Black/African/Caribbean background, write in

E  Other ethnic group
   - Arab
   - Any other ethnic group, write in

Ethnic group, UK, 2011
How would you describe your national identity?

Tick all that apply

- English
- Welsh
- Scottish
- Northern Irish
- British
- Other, write in

[ space for write-in answer ]
Hungary, 2011, optional questions

34. Which nationality do you feel you belong to?
- Hungarian
- Bulgarian
- Gipsy (Roma)
- Greek
- Croatian
- Polish
- German
- other, namely:
- do not wish to answer.

38. Which religious community or denomination do you feel you belong to?
- do not belong to any religious community or denomination
- atheist
- do not wish to answer

36. What is your mother tongue? (Please mark two answers maximum!)
- Hungarian
- Bulgarian
- Gipsy (Romani, Beas)
- Greek
- Croatian
- Polish
- German
- Armenian
- Romanian
- Ruthenian
- Serbian
- Slovakian
- Slovenian
- Ukrainian
- other, namely:
- do not wish to answer.
### Ethnic and Cultural Characteristics

_Each person is free to express his or her opinion, without any constraints_

<table>
<thead>
<tr>
<th>Question</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>23  WHAT ETHNIC GROUP DOES THE PERSON CONSIDER HE/SHE BELONGS TO?</td>
<td></td>
</tr>
<tr>
<td>24  WHAT IS THE PERSON'S MOTHER TONGUE?</td>
<td></td>
</tr>
<tr>
<td>25  WHAT RELIGION DOES THE PERSON CONSIDER HE/SHE BELONGS TO?</td>
<td></td>
</tr>
</tbody>
</table>
Albania, 2011

39 To which ethno-cultural group do you belong?

Self-declaration, not obligatory

1 □ I belong to ethno-cultural group:

Specify

2 □ Prefer not to answer
Albania 2011: Raw data on ethnicity had 430 different answers, reduced to 16 categories which ended up to 8 main groups

<table>
<thead>
<tr>
<th>Ethnic and cultural affiliation</th>
<th>Population (Resident)</th>
<th>Percentage of resident population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shqiptare Albanian</td>
<td>2,312,356</td>
<td>82.58%</td>
</tr>
<tr>
<td>Greek</td>
<td>24,243</td>
<td>0.87%</td>
</tr>
<tr>
<td>Macedonian</td>
<td>5,512</td>
<td>0.20%</td>
</tr>
<tr>
<td>Montenegrin</td>
<td>366</td>
<td>0.01%</td>
</tr>
<tr>
<td>Aromanian</td>
<td>8,266</td>
<td>0.30%</td>
</tr>
<tr>
<td>Roma</td>
<td>8,301</td>
<td>0.30%</td>
</tr>
<tr>
<td>Egyptian</td>
<td>3,368</td>
<td>0.12%</td>
</tr>
<tr>
<td>Other</td>
<td>2,644</td>
<td>0.09%</td>
</tr>
<tr>
<td>Prefer not to answer</td>
<td>390,938</td>
<td>13.96%</td>
</tr>
<tr>
<td>Not relevant/not stated</td>
<td>44,144</td>
<td>1.58%</td>
</tr>
</tbody>
</table>
Reproduction of the Questions on Hispanic Origin and Race From the 2010 Census

→ NOTE: Please answer BOTH Question 5 about Hispanic origin and Question 6 about race. For this census, Hispanic origins are not races.

5. Is this person of Hispanic, Latino, or Spanish origin?
   □ No, not of Hispanic, Latino, or Spanish origin
   □ Yes, Mexican, Mexican Am., Chicano
   □ Yes, Puerto Rican
   □ Yes, Cuban
   □ Yes, another Hispanic, Latino, or Spanish origin — Print origin, for example, Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on. 

6. What is this person’s race? Mark [X] one or more boxes.
   □ White
   □ Black, African Am., or Negro
   □ American Indian or Alaska Native — Print name of enrolled or principal tribe.
   □ Asian Indian
   □ Chinese
   □ Filipino
   □ Other Asian — Print race, for example, Hmong, Lao, Thai, Pakistani, Cambodian, and so on.
   □ Japanese
   □ Korean
   □ Vietnamese
   □ Native Hawaiian
   □ Guamanian or Chamorro
   □ Samoan
   □ Other Pacific Islander — Print race, for example, Fijian, Tongan, and so on.
   □ Some other race — Print race.

Source: U.S. Census Bureau, 2010 Census questionnaire.
6.08 - A SUA COR OU RAÇA É:

1 - BRANCA   2 - PRETA   3 - AMARELA   4 - Parda   5 - INDÍGENA

(SE TERRA INDÍGENA NO TIPO DE SETOR E CÓDIGOS 1 A 4 NESTE QUESITO SIGA 6.07)
(SE TIPO DE SETOR DIFERENTE DE TERRA INDÍGENA E CÓDIGOS 1 A 4 NESTE QUESITO PASSE AO 6.12)

(Passe ao 6.09)