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Identity Checks in Paris

*René **LÉVY** and **Fabien JOBARD** outline the results of the first French quantitative study of identity checks based on direct observation. This investigation was made possible by collaboration between the CESDIP and the Open Society Justice Initiative, which financed it. It was conducted in collaboration with Rachel NEILD and Indira GORIS of the Open Society Justice Initiative and John LAMBERTH of Lamberth Consulting.*

Of all the prerogatives the French police forces exercise in public places, the identity check (IC) is certainly the one that draws the most frequent reproaches of bias, harassment, and discrimination. The French commonly use the term *contrôle au faciès*, or looks-based checks, for what specialists call ethnic or racial profiling. This designates the « use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin, in control, surveillance, or investigative activities »[1].

A fuzzy legal and case-law environment

In France, identity checks are regulated by a complex apparatus derived from the layering of a series of successive legislative texts (articles 78-1 to 78-6 of the Code of Criminal Procedure). The purpose of these texts is both repressive and preventive. They target individuals suspected of having committed an offense or of planning to do so, and aim at protecting a given location from a more or less substantiated risk. They also define a variety of means of implementation, depending on whether the police officers or gendarmes are acting on instructions from the Public Prosecutor or on their own initiative, and varying with the type of officer, the person stopped, the offense, and the place involved. Article L.611-1 of the French Code of Entry and Stay of Foreigners and of the Right to Asylum requires that all foreigners carry with them at all times full proof of their right to be present in France, making foreigners the people most exposed to identity checks. But officers cannot base their checks on the person's physical appearance, and must allege a presumption that the person is a foreigner, based either on the person's own admission or on some other « objective » fact (which case law has great difficulty defining). The legislation leaves some room for institutional discrimination here, since the public prosecutor may very well demand that the police target the offense of undocumented migration within an area defined by him.

Profiling may be encouraged by explicitly discriminatory policing policies, but it may also be the fruit of decisions by individual police officers, produced by shared stereotypes as to what should be viewed as suspicious, or as the propensity of any particular minority group to break the law. It may also originate in policies targeting specific kinds of criminal offenses and/or some geographic areas, with no regard for the disproportionate effects of those policies on particular minorities. In other words, discrimination is sometimes direct, and at other times indirect[2].

Measuring discrimination

No quantitative evaluation is available for identity checks by police officers in France, for lack of official statistics. There are of course qualitative findings on identity checks, obtained during surveys in which investigators collect first-hand accounts or are present, occasionally, during such checks.

Establishing the existence of discrimination raises complex methodological issues. The fact that a great many of the people checked belong to a visible minority is not enough; there must also be proof that they are overrepresented with respect to a reference population. The first difficulty resides in the definition of the latter.

Early research on this question in other countries was based on the postulate that census data would do, in countries such as the United Kingdom or the United States, where they contained information of an ethnic or racial character. But it was subsequently discovered that the *resident population* in a given neighborhood might be quite different from the population that passes through that neighborhood. Now, it is the *available* population which forms the potential target for checks. Another option would be to use the group of *offenders* as the reference, but this raises other problems:

a) police and gendarmerie statistics do not contain ethnic and racial data on offenders,

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[1] ECRI, *General Policy Recommendation n. 11 on Combating Racism and Racial Discrimination in Policing* (resolution adopted June 29, 2007).

[2] Discrimination is said to be *direct* when the questionable measure is based on a specific feature of the person targeted (skin color, for instance), and *indirect* when an apparently neutral measure actually disadvantages a given category of people (for instance, using height as a criterion, knowing that women are generally shorter than men).

b) these statistics only show those offenders who have been identified, and therefore leave out unknown offenders, by far the largest group,

c) some of the offenses do not pre-exist to, but are uncovered by policing activity, mostly through preventive identity checks, but to an extent that cannot be determined,

d) more basically, there is the fact that identity checks are not exclusively aimed at repressive law enforcement, but also serve a far broader mission, which is to prevent public disorders.

Use of the *population available to be stopped* as the reference group raises the question of how one collects the characteristics of those individuals, and of those actually stopped by the police.

The implementation of the study

Protocol of the study

Observation was conducted in two phases: the first, benchmarking phase sought to identify the reference population (the available population); the second aimed at monitoring identity checks.

A relatively complex protocol was used to measure the available population. It consisted of posting an investigator successively at each entry point to the site chosen, so as to record the features of entering individuals. This operation was repeated for each relevant period of time and for each site[3]. In all, 38,000 recordings were made. Owing to the extremely diversified composition of the population depending on the site, along with differences in the sampling rates for recording, it was impossible to conduct a comprehensive analysis of all sites. Each site was therefore analyzed separately.

Identity checks were then observed directly. Since we only had a single monitoring team on each site, we were of course unable to monitor the totality of policing activity, and were obliged to follow a single patrol at a time. This explains why the observed frequency of checks – 1.25 per hour of observation – does not reflect the total activity of the police forces present on a given site. This frequency is noteworthy, for if the police officers knew they were being observed it would be very easy for them to influence the study's findings by marginally modifying their practices. It was to avoid this bias that a discrete recording technique was developed for the monitoring. Monitors were given cell phones (with no camera function). They recor-

ded the 5 or 6 features defined in advance, using a code, and sent the recording by SMS to a server, where the messages were converted into a statistically analyzable table. In all, 525 identity checks were observed over a period of about 20 weeks.

The main statistical indicator used in this study is the odds ratio (the OR), which compares the respective probabilities of being checked for different groups in relation to the composition of the available population. To take the example of the « physical appearance » variable, for instance, the odds ratio measures the disparities between probabilities of being checked depending on the category to which the individuals belong. The higher the OR, the greater the disparity.

Variables included

The aim of this study was not to determine the « ethnic origins » of the persons stopped by the police: what interested us was appearance – the *visibility* of those differences – and the police officers' perceptions, based on stereotypes. *The study rests on the postulate that the monitors and the police officers have a similar perception of those people's appearance.*

For lack of any shared « ethnic and racial frame of reference »[4], categories of physical appearance had to be chosen on the basis of two requirements: being as close as possible to the categories perceived by the officers doing the checks, as uncovered by earlier observations, and being susceptible of application at a distance by our monitors.

In an *Open Society Justice Initiative* investigation conducted in Moscow in 2005, on which the Paris study was patterned, only physical appearance, age and sex were considered. To obtain a more accurate picture of French policing practices we felt it necessary to include other features.

For **physical appearance**, we introduced a distinction between « Whites », « Blacks », « North Africans », Indo-Pakistani » and « other Asians »[5]. We also noted the apparent **gender** and **age**[6] of passers-by and people whose identity was checked. Further, since these areas all came under « Vigipirate » (the French high-security counter-terrorism plan), **carrying a bag**, and especially a large bag, might justify more frequent checks, under the guise of terror prevention. We therefore noted that information as well.

Furthermore, these areas are gathering-places for those youths, many of whom come from outlying suburbs, who are particularly targeted by the police. This led us to supplement the usual variables with the notion of dress, differentiating the well-dressed and those wearing business clothing, people dressed casually or in sportswear, and those whose dress was characteristic of youth culture fashions such as hip-hop or rapper dress, reggae, tektonic, gothic, punk, and so forth.

For the identity checks themselves, monitors noted the **modalities**, distinguishing between individuals simply stopped and checked, checked and frisked or searched, and checked and detained.

Findings

Gender, age, and physical appearance make a great difference

There is a considerable disparity between the composition of the population stopped and that of the population available on the location. The first disparity has to do with gender. Except in the Thalys train area the probability of being checked is much greater for men than for women. Youths are also inordinately checked, and significantly so, irrespective of their proportion within the available population. This means that even in places where young people are numerous, they are stopped in inordinate proportions. The most spectacular example is at the Fontaine des Innocents square, where they form slightly over half of the population available, but 99% of those stopped. There is also an obvious disparity for *visible minorities*, irrespective of the number – large or small – of these people within the available population. For example, we only noted 7.5% of Blacks among the available population in the Thalys train area, but they represented 31% of those checked. At the Fontaine des Innocents they represented 29% of the people available but 62% of those checked. In short, the probability of being stopped is much higher for Blacks and North Africans than for Whites. The odds ratios for these minorities are higher than those usually observed in comparable studies in Great Britain and the United States.

The role of dress

Things become more complicated when we do a cross analysis of variables, including dress. Unsurprisingly, well-dressed people or those in business attire are rarely stopped, proportionately to their representation within the available population, and the same is true of « normal, casual » wear, which also attracts disproportionately few checks, except on the Thalys platform, where the

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[3] The idea was to cover the entire period of time viewed as relevant, divided into 4-hour observation periods, with observations conducted in the different times and places in random order. This methodology was developed by John Lamberth and implemented with his help (see: **http://www.lamberthconsulting.org**).

[4] According to the 2005 formulation by the CNIL, the French commission protecting privacy.

[5] The preliminary phase had shown all the other categories initially considered, including Roms, Slavs, orthodox Jews, and so on, to be insufficiently represented among the people present in the locations under study.

[6] Age was simplified as « young » (apparently under age 30) and « old » (apparently over age 30).

Table 1. Odds ratios for Blacks compared to Whites at each observation site

	Available population			Population stopped			
	Whites + Blacks % n	Whites % (d) n	Blacks % (c) n	Whites + Blacks % n	Whites % (b) n	Blacks % (a) n	Odds-ratios (ad/bc)
Gare du Nord Railway Station	100 6 867	82.2 5 654	17.8 1 224	100 54	40.7 22	59.3 32	**6.7**
Gare du Nord RER	100 6 354	57.1 3 630	42.9 2 724	100 91	40.7 26	59.3 65	**3.3**
Gare du Nord Thalys	100 3 478	92.5 3 218	7.5 260	100 91	69.2 63	30.8 28	**5.6**
Châtelet RER	100 7 534	65.1 4 906	34.9 2 628	100 43	40.7 6	59.3 37	**11.5**
Châtelet Innocents	100 5 957	70.8 4 215	29.2 1 742	100 63	38.1 24	61.9 39	**3.9**

Table 2. Odds ratios for North Africans compared to Whites at each observation site

	Available population			Population stopped			
	Whites + North Africans % n	Whites % (d) n	North Africans % (c) n	Whites + North Africans % n	Whites % (b) n	North Africans % (a) n	Odds-ratios (ad/bc)
Gare du Nord Railway Station	100 6 350	89.0 5 654	11.0 696	100 58	37.9 22	62.1 36	**13.2**
Gare du Nord RER	100 4 883	74.3 3 630	25.7 1 253	100 42	61.9 26	38.1 16	**1.8**
Gare du Nord Thalys	100 3 324	96.8 3 218	3.2 106	100 75	84.0 63	16.0 12	**5.8**
Châtelet RER	100 5 954	82.4 4 906	17.6 1 048	100 25	24.0 6	76.0 19	**14.8**
Châtelet Innocents	100 5 313	79.3 4 215	20.7 1 098	100 43	55.8 24	44.2 19	**3.0**

Table 3. Observation sites, physical appearance and dress (odds ratios)

Odds-ratios	Blacks vs. Whites	North Africans vs. Whites	« Youth culture » dress
Gare du Nord-Railway Station	6.7	13.2	5.7
Gare du Nord-RER	3.3	1.8	9.5
Gare du Nord-Thalys	5.6	5.8	11.6
Châtelet-RER	11.5	14.8	16.1
Châtelet-Innocents	3.9	3.0	14.1

odds ratio is 1.3, which is still relatively low. The odds ratios for youth culture clothing are in a much higher bracket, ranging from 5.7 to 16.1 depending on the location. Moreover, these odds ratios are generally higher than those found for physical appearance alone.

Does this mean that dress is *more predictive* of checks than racial appearance? It is difficult to say so by merely comparing one odds ratio with another. If, for instance, Whites are under-stopped because they are more often well dressed, or conversely, if Blacks are over-stopped because they tend to wear youth clothing, then the comparison of odds ratios only compares the same thing twice, or more accurately, it compares two phenomena that feed each other and produce cumulative effects. And that is definitely what happens: in the available population, two-thirds of the people wearing youth clothing are Blacks or North Africans. The small size of the group does not allow for more thorough statistical analysis of the specific effects of each of these variables, however.

All we can say, then, is that *people who are young, male, wearing typical youth-culture clothing and belonging to visible minorities are inordinately often checked by the police*. Dress may be viewed as a « racialized » variable, in that police officers who wish to make checks on visible minorities without focusing their stops on « foreign origin » criteria which are legally barred as justification for identity checks need only randomly stop people in typical youth dress... and the chances are two out of three that they will catch a Black or a North African.

Readers are reminded, however, that our research was *asymmetrical*, since it observed events and questioned the people checked, as will be seen below, but did not question police officers. Before going any further in our interpretations, let us look at some more lateral elements of the study.

Other findings

Firstly, and importantly, we note that carrying a bag of any sort does not motivate checks, since there is a greater risk of being stopped for people without bags... a fact which makes short shrift of deterrence of terrorist attacks as justification. Secondly, the vast majority of checks has no broader outcome in terms of police action: only 14% of those stopped were taken to the police station, for reasons unknown (they may be judicial, ranging from being taken in for questioning to police custody, or administrative, such as for a more complete verification of identity). This means not only that these checks do not seem to be motivated by concern with terrorism (which would take the form of inspecting bags), but also that they apparently do not lead up to any serious charge.

Next, we note that these checks do not have the same effect on the different groups stopped. Another facet of the study involved questioning the person who had just been stopped. A first point was that 4/5ths of the 173 respondents indicated that this was not the first time they had been checked, and that they were stopped « often or very often », sometimes between 5 and 20 times in the past month. The frequency was highest for Blacks and North Africans, and all

those who claimed to have been checked over 9 times were black. However, in three fourths of cases the people checked said the police had been « neutral », and 6% found them « polite » or « respectful ». But negative perceptions as to « general feelings after the check » are extremely varied. Whereas 15% of Whites said they were annoyed or very upset, the proportion rose to 23% in North Africans and 36% in Blacks. This shows contrasting consequences of checks, in terms of their perception and how they contribute to judgments about the police: in other words, their symbolic dimension. Moreover, according to 60% of those questioned the police did not give any reason for the check.

While this study provides some objective information on a policing activity which the policing institutions themselves have never made any effort to document, like any investigation it has its limits, in several respects.

First of all, the approach used has several inherent constraints. It requires relatively easily delineated locations, where visibility is good (well-lit at night, for instance), but at the same time where monitors may do their work unnoticed by the police and passers-by. It is also costly in terms of time and personnel. Locations were therefore mainly chosen for the large number of expected checks, with monitoring focused on pedestrians

in crowded places rather than on pedestrians or drivers in or around those Parisian or suburban housing projects where officers — usually on security rounds — do identity checks that nourish feelings of discrimination among the groups subjected to checks. Last, it would have been interesting to note the characteristics of the individual officers in the patrols, and to note the proportion of those belonging to minority groups. This would have enabled us to test the hypothesis according to which the composition of the police forces affects their behavior as well as the perception of their action by the people involved. It would also have been preferable to have better knowledge of the instructions handed down by the public prosecutor's office in the framework of article 78-2 of the Code of Criminal Procedure, and more broadly, of the orders received by officers from their superiors, as well as of any reports they may make on their identity check work. Many aspects of identity checks require further investigation, then.

Nonetheless, this study does illustrate another approach to the measurement of discrimination, one which differs from those usually discussed presently: indeed, it does not rest on the establishment of « ethnic » public statistics or on testing, or on the definition, by victims of discrimination, of their own « ethnic » identity. It therefore opens new paths

for investigations in those fields where administrative and other official data are insufficient, and in some cases irrelevant.
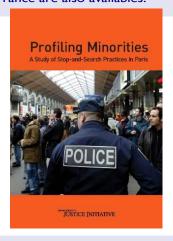
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The report is available on the C E S D I P ' s w e b s i t e : *http://www.cesdip.fr/spip. php?article427*.

For more information on the *Open Society Justice Initiative*, see: *http://www.soros.org/initiatives/ justice/*.

Where reports on Russia (2006), Hungary, Spain and Bulgaria (2009) and France are also availables.

Profiling Minorities
A Study of Stop-and-Search Practices in Paris

POLICE

JUSTICE INITIATIVE

Selecting observation sites

We first conducted a preliminary study in the spring of 2007, aimed at identifying locations in Paris and its suburbs where the available population was sufficiently numerous and varied and was subjected to frequent police checks, and where monitors could operate easily and discreetly. The following locations were tested for about six weeks, and found to produce an insufficient number of checks: Auber, Boulevard Barbès, Boulevard de Belleville, Champs-Élysées, Charles de Gaulle-Étoile, Gare d'Austerlitz, Gare de Lyon, Gare Montparnasse, Gare Saint-Lazare, La Défense, Melun (RER/SNCF), Nanterre (RER), Place d'Italie, Saint-Denis-Basilique, Saint-Denis-Université, Sèvres-Babylone and Tolbiac.

In the end, we chose five sites located in the Gare du Nord and Châtelet-Les Halles areas: the regional metro (RER) platform of the Châtelet-Les Halles metro station, the main hall of the Gare du Nord train terminal, the North-European « Thalys » fast train platform, the regional metro/Paris metro/suburban trains interchange concourse at the Gare du Nord train and metro station and the Place Joachim du Bellay (Fontaine des Innocents square). The Gare du Nord complex, through which over 180 million passengers transit yearly, is France's largest train station and one of the largest in Europe, serving dozens of subway, regional subway, regional and international train lines. Likewise, Châtelet-Les Halles is a major transportation hub, visited by 13 million people a year. Also, it is one of the few public facilities easily accessible to and shared by Parisians of all backgrounds as well as by suburbanites, since it contains the city center's main shopping mall. The nearby Fontaine des Innocents is known as a meeting-place for youths. It is easy for the police to act in these areas, particularly since the different parts of the Gare du Nord form a designated Schengen area, which facilitates checks, and all are under strict surveillance in connection with the « Vigipirate » anti-terrorist scheme, indicating de facto a presumed risk of disturbance of the public order. Various police and gendarmerie units operate in these areas, especially at the Gare du Nord. Possible checks by subway (RATP) or railway (SNCF) employees (ticket inspectors or security guards) or by soldiers backing the police forces were excluded. On the Thalys platforms monitoring targeted customs officials.

Training monitors

Monitor training involved a brief description of the project, an introduction to the locations chosen, detailed explanations on what data to collect, how to conduct the observations, and how to record data. We also accompanied them to the field work locations.

To ensure consistent classification of the persons observed, monitors were given an inter-rater reliability test. Photos corresponding to the various categories in the classification (two for each origin, one for age, gender, dress and bags) were flashed onto a computer screen at five-second intervals. Monitors were required to classify the picture for the 5 variables used, with a margin of less than 10% for errors on each variable. All candidates passed the test successfully.