

Universal Periodic Review – United Kingdom: May 2012

INTRODUCTION

1. Drawing on research conducted by the Open Society Justice Initiative and Stopwatch since the United Kingdom's last Universal Periodic Review (UPR) in 2008, this submission highlights concerns with provisions contained in three legislative acts in the UK, which perpetuate the use of ethnic profiling by police as a matter of daily practice in regular law enforcement, and increasingly, under exceptional powers ostensibly to combat terrorism. These provisions, and the continued disproportionate targeting of ethnic minorities in "stop and search" practices they allow, undermine the United Kingdom's compliance with its international human rights obligations regarding non-discrimination, right to freedom of movement and the right to an effective remedy. These rights are protected under the United Nations' *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, and the *Convention on the Elimination of all Forms of Racial Discrimination*. The UK's laws which help facilitate the UK's ethnic profiling practices also contravene its regional human rights obligations under the Council of Europe's *European Convention on Human Rights* and the European Union's *Charter of Fundamental Rights*. In outlining concerns about these laws and practices, this submission will address the UK's lack of implementation of one of the Human Rights Council's recommendations from the country's 2008 UPR — which the UK accepted — that "review all counter-terrorism legislation and ensure that it complies with the highest human rights standards."
2. The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. The Justice Initiative has monitored stop and search practices in the UK for six years, advocating for legal and policy reform to address its discriminatory effects.
3. StopWatch is an action group formed of leading organisations from civil society, the legal profession and academia in the UK. StopWatch aims to ensure the fair and effective use of stop and search powers to promote safety and positive police community relations. Participating organisations include Equinomics UK, Federation of Student Islamic Societies (FOSIS), Ipswich and Suffolk Council for Racial Equality (ISCRE), Manheim Centre for Criminology, London School of Economics, Muslim Safety Forum, NACRO, Not Another Drop, Release, Runnymede Trust, School of Law, Kings College London, Second Wave, and Turning Point.
4. **Our central requests are that the UPR Working Group recommend that the UK:**
 - Review the discriminatory impact of "stop and search" powers on ethnic minority groups under both regular law enforcement and counter-terrorism legislation;
 - Institute legislative amendments to eliminate disproportionate targeting of ethnic minorities and ensure all powers meet the highest human rights standards in law and practice; and
 - Reinstate full recording of stop and search powers to ensure an avenue for an effective remedy of rights violations and scope for local community monitoring.

BACKGROUND

5. British police have legal powers to stop and search members of the public who they suspect may have committed, or are about to commit, an offence. In practice, these powers excessively target ethnic minorities. Concerns about the disproportionate targeting of ethnic and religious minorities – particularly Muslims – in stops and searches, were raised in the Council’s Working Group during the UK’s last UPR in 2008. The Islamic Republic of Iran, for example, “noted concerns expressed at the disproportionately high number of “stop and searches” carried out by police against members of ethnic or racial minorities, and the “profiling” in counter-terrorism efforts by the Government officials as well as the abuse of counter-terrorism laws which are perceived to target the Muslim population.”¹
6. Still today, the use of ethnic profiling remains a stubborn feature of stop and search practices in the UK. “Ethnic profiling” refers to the use by law enforcement officials of generalizations grounded in ethnicity, race, religion, or national origin—rather than objective evidence or individual behavior—as the basis for making law enforcement and/or investigative decisions about who has been or may be involved in criminal activity.² The UK’s Equalities and Human Rights Commission’s (EHRC) investigation into the use of stop and search powers in 2010 concluded that a number of police forces are using the powers in a manner that is disproportionate and possibly discriminatory.³
7. The legal basis for police ‘stop and search’ powers in the United Kingdom is embodied in various pieces of legislation that are regulated by the *Police and Criminal Evidence Act (PACE) Code of Practice A*. The vast majority of stop and searches are carried out under the auspices of three Acts - *PACE 1984* (section 1), *Misuse of Drugs Act 1971* (section 23) and the *Firearms Act 1968* (section 47). The use of exceptional stop and search powers that do not have the safeguard of reasonable suspicion — and which are contained in Section 60 of the *Criminal Justice and Public Order Act 1994* and Section 47a and Schedule 7 of the *Terrorism Act 2000* — has substantially increased since the UK’s last UPR review in 2008.
8. The UK’s stop and search laws and practices are frequently justified on the basis of countering terrorism, averting potential violence or preventing and detecting crime. During its 2008 Review by the Human Rights Council, the UK responded to concerns about the use of ethnic profiling by denying any subjective stereotyping in the use of stop and search powers by police. It stated that “the stop and search power is intelligence-led, and is more likely to be effective and to secure public confidence if based on up-to-date intelligence and on an effective assessment of threat, rather than on an individual’s racial profile. It is aimed at terrorists and criminals, whatever their background.”⁴ Yet rather than targeting terrorists and criminals, stop and search powers have cast a wide net over thousands of innocent persons. Moreover, changes in law and policy since 2008 have resulted in less “intelligence-led” approaches to policing, and greater reliance on ethnic stereotyping in conducting stops and searches — with fewer accountability mechanisms to place a check on discriminatory abuse.

RELEVANT INTERNATIONAL OBLIGATIONS BREACHED BY ETHNIC PROFILING PRACTICES

9. Protection against ethnic profiling is contained in at least three international human rights conventions to which the UK is a party: the *Universal Declaration on Human Rights* (UDHR), the *International Covenant on Civil and Political Rights* (ICCPR) and the *Convention on the Elimination of all Forms of Racial Discrimination*

¹ *Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland*, May 23, 2008, U.N. Doc A/HRC/8/25 at 10.

² Ethnic profiling is a term of art that describes discriminatory law enforcement. It should not be confused with “profiling” or “criminal profiling” which refers to a police practice in which a defined set of characteristics is used to look for and apprehend someone who has committed a crime (criminal profiling) or to identify people likely to engage in criminal activity (behavioral profiling).

³ Equalities and Human Rights Commission (2010), *Stop and Think: A Critical Review of the Use of Stop and Search Powers in England and Wales*. London: EHRC.

⁴ *Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland*, May 23, 2008, U.N. Doc A/HRC/8/25 at page 11.

(CERD). Regional human rights obligations offering similar protections include the Council of Europe's *European Convention on Human Rights* (ECHR) and the European Union's *Charter of Fundamental Rights* (CFR).

10. **The general prohibition against discrimination based on race or ethnicity** is most comprehensively set out in the CERD, but is also protected under all other relevant international and regional human rights instruments to which the UK is a party.⁵ Under CERD Article 2(1)(a), the UK is obliged to “engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.” Article 2(1)(c) requires the UK to “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.” In the UK, the interplay between these two provisions compounds the government's lack of compliance with its non-discrimination obligations. The UK's failure to adequately amend discriminatory legislation required by CERD Article 2(1)(c) has, in effect, paved the way for police and other public authorities to use their discretionary powers in a way that discriminated against ethnic minorities, violating CERD Article 2(1)(a). This lack of compliance is relevant not only for the everyday use of ethnic profiling in regular law enforcement, but also for the use of extraordinary powers which facilitate the use of ethnic profiling to combat terrorism—an issue of concern to the Human Rights Council at the UK's 2008 Review.
10. The **right to freedom of movement**, protected under CERD Article 5(d)(i) as well as UDHR Article 13, has been limited by **legitimate national security restrictions** contained in the ICCPR's Article 12. ICCPR article 12(3) requires such restrictions to be “provided by law” and be “necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others.” Such legitimate restrictions, however, must also be consistent with other ICCPR rights, which includes the ICCPR Article 2 right not to be discriminated against on account of, inter alia, race. The disproportionate targeting of minorities in stop and search practices in the UK fails to comply with the non-discrimination requirement underpinning the use of legitimate national security restrictions on the right to freedom of movement.
11. The **right to an effective remedy** is protected by UDHR Article 8, ICCPR Article 2(3), ECHR Article 13, CERD Article 6 and CFR Article 47. One avenue to ensure effective protection and remedies to persons whose rights have been violated through discriminatory stop and search practices was highlighted by the CERD Committee in its September 2011 Concluding Observations on the UK. It recommended that the UK government “ensure that all stops are properly recorded, whether or not leading to searches, and that a copy of the record is provided to the person concerned for all such incidents in order to safeguard the rights of those subject to these laws and to check possible abuse.” Such recording would provide victims of ethnic profiling with a mechanism through which to seek remedy from the complaints system and ultimately the courts.
12. In responding to the UPR's recommendation 6 on counter-terrorism laws in the UK's 2008 review, this submission contends that legislative reviews by the UK to date have not had the effect of eliminating ethnic discrimination in the use of exceptional stop and search powers designed to combat terrorism—particularly in relation to the *Terrorism Act 2000*. Moreover, further review and amendment of legislation governing the regular use of stop and search in everyday policing, such as the *Criminal Justice and Public Order Act 1994*, and the *Police and Criminal Evidence Act 1984*, is also required to ensure the UK stops violating its international human rights obligations. Each of these laws perpetuates discrimination against ethnic minorities.

CONCERNS ABOUT THE UK'S IMPLEMENTATION OF ITS HUMAN RIGHTS OBLIGATIONS

13. This submission analyses stop and search powers under three main laws - the *Police and Criminal Evidence Act 1984*, the *Terrorism Act 2000* and the *Criminal Justice and Public Order Act 1994*, and ends with a review of the weakening of accountability mechanism and the lack of avenues for redress.

⁵ These include the Universal Declaration of Human Rights (UDHR) (Article 2), The International Covenant on Civil and Political Rights (ICCPR) (Article 2), the European Convention of Human Rights (ECHR) (Article 14) and the Charter on Fundamental Rights (Article 21).

A. The Terrorism Act 2000

14. Despite recent amendments to counter-terrorism legislation designed to reduce the risk of discrimination in stop and search powers, changes have not gone far enough to ensure compliance with human rights standards. Two sets of provisions within the *Terrorism Act 2000* continue to be a cause for concern: Sections 47a (which replaced sections 44(1) and (2)) and Schedule 7.
15. **Sections 44(1) and (2)** allowed police officers to stop and search vehicles and pedestrians for articles that could be used for terrorism even without reasonable suspicion that such articles are present within an authorised area. The discretion allowed under Section 44 has resulted in the disproportionate targeting of ethnic minorities. In 2009-10, 35 per cent of Section 44 stop and searches were conducted on people from black and minority ethnic groups even though they make up less than 10 per cent of the national population.⁶ A 2010 European Court of Human Rights judgment concerning these provisions, in the case of *Gillan and Quinton v. the United Kingdom*, held them to be “neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse.”⁷ Finding a violation of the right to respect for private life under Article 8 of the *European Convention on Human Rights* (ECHR), the Court also noted the clear risk of arbitrariness in the granting of such broad discretion to police officers. It highlighted the risks of discriminatory use of such powers, given that the available statistics demonstrating that black and Asian people were disproportionately affected by the powers.⁸ The *Gillan* decision also noted that stop and search under Section 44 amounted to a deprivation of liberty within the meaning of Article 5 § 1.⁹
16. Section 44 powers were suspended in the wake of the European Court’s judgment. To address the ECHR violation, the UK Secretary of State introduced Section 47(a) (replacing Section 44) in the *Terrorism Act 2000 (Remedial) Order 2011* on March 18, 2011.¹⁰ Under this new order, police are still allowed to stop and search individuals in a defined area without reasonable suspicion if an act of terrorism is reasonably suspected, and stop and search is deemed necessary to prevent such an act. This new Order also provides that officers exercising the stop and search powers may only do so for the purpose of searching for evidence that the person concerned is a terrorist or that the vehicle concerned is being used for the purposes of terrorism. A senior officer must take the decision to authorize this power for as long as deemed necessary, but no longer than 14 days. The senior officer must seek confirmation from the Secretary of State who can modify the length and area the authorization covers.
17. In June 2011, however, the UK Parliamentary Joint Committee on Human Rights found that the new Order did not go far enough to protect human rights.¹¹ The Committee recommended that more safeguards needed to be put in place to curb the degree of discretion that could lead to discriminatory application of the Order. These safeguards included the requirement for the senior officer to have, and explain, a “reasonable basis” for her belief (as opposed to suspicion) as to the necessity of the authorization for stop and search; for authorizations to be renewed only in cases in which new or additional information emerges or a fresh assessment confirms the original intelligence that the threat remains immediate and credible; that prior judicial authorization of the availability of the power to stop and search without reasonable suspicion should be required; and that the Code of Practice accompanying the Order should contain stronger recording and public notification requirements to facilitate monitoring and supervision of the use of the power.

⁶ Ministry of Justice (2011), *Police Powers and Procedures England and Wales 2009-2010*, Second Edition, London: Ministry of Justice.

⁷ ECtHR, *Gillan and Quinton v. the United Kingdom*, Application no. 4158/05, judgment of January 12, 2010, at 87

⁸ *Gillan and Quinton v. the United Kingdom*, at 85.

Gillan and Quinton v. the United Kingdom, at 57.

¹⁰ *Terrorism Act 2000 (Remedial) Order 2011*. The “remedial order” under section 10 of the Human Rights Act 1998, allows the Home Secretary to make immediate changes to the legislation. The order makes temporary provision while the Protection of Freedoms Bill, which would bring the powers into line with the European Convention of Human Rights, following the European Court of Human Rights ruling in the case of *Gillan and Quinton v United Kingdom*, is being debated Parliament

¹¹ Parliamentary Human Rights Joint Committee, *Terrorism Act 2000 (Remedial) Order 2011: Stop and Search without Reasonable Suspicion (Fourteenth Report)*, 7th June 2011

18. In July 2011, the report of the Independent Reviewer of Terrorism Legislation, David Anderson QC, assessed the operation of the *Terrorism Act 2000*. His report raised concerns that the discretion conferred on individual officers under both the Remedial Order and the accompanying Code of Practice, remained too broad. Such discretion, the report argued, continued to carry the risk of arbitrariness that concerned the European Court of Human Rights in *Gillan*.¹² Anderson was particularly concerned about the continued scope for random searches by police, and the lack of definition of the circumstances in which random searches are appropriate.
19. In July 2011, the Home Secretary, Theresa May, rejected the recommendations made by the Joint Committee on Human Rights and the Independent Review, and refused to amend the Remedial Order. Meanwhile, a second report issued by the Joint Committee on Human Rights in September 2011 again called for a new order to bring section 47a in compliance with ECHR.¹³ Such changes are both urgent and necessary in light of the disproportionate impact these provisions have had on ethnic minorities.
20. **Schedule 7** of the *Terrorism Act 2000* is of equal, if not greater, concern. It was not considered in the 2010 parliamentary review of counter terrorism and operates outside of the regulatory framework that covers other police stop and search powers. Schedule 7 provides stop and search powers in ports and airports where ‘examining officers’ are able to stop, question and/or detain people, *without the need for any reasonable suspicion*, to ascertain whether they are likely to be engaged in acts of terrorism. Individuals stopped under the power may be detained and examined for up to *nine* hours during which they may be questioned, strip-searched, have their belongings searched and have samples of their DNA and fingerprints taken. Although those detained under the power are not under arrest, they are obliged to co-operate and answer questions in the absence of a lawyer or risk being arrested for “obstruction.”¹⁴ The *Gillan* decision noted that stops and searches under section 44 that lasted up to 30 minutes amounted to a deprivation of liberty —that is, a significantly shorter time period than allowed under Schedule 7.
21. The potential for discretionary abuse of this provision against ethnic minorities is significant – and has been demonstrated in practice. Recent figures show that 65,684 people were stopped under Schedule 7 of the *Terrorism Act 2000* in 2010/11. However, the overall arrest rate remains very low at 1.4 per cent.¹⁵ Black and minority ethnic groups make up the majority of those subject to Schedule 7 stops even though they account for a small minority (approximately 10 per cent) of the national population. Asians accounted for 30 per cent of Schedule 7 stops (and five per cent of the national population), Blacks accounted for nine per cent of stops (and 3 per cent of the population) and people from other ethnic groups (including Chinese and ‘mixed race’) accounted for 20 per cent of stops (but only three per cent of the population). The targeting of black and minority ethnic groups continues to be even more marked when we consider the most intensive Schedule 7 stops. Of those stops which lasted over an hour, 46 per cent were of Asians, 15 per cent were of blacks and 24 per cent were of ‘other’ ethnic groups. Fewer than 15 per cent of stops were of whites.¹⁶
22. To the extent that Schedule 7 stops can be understood as placing a limitation on individuals’ freedom of movement, it is worth analyzing the extent to which such limitations are permissible in the context of national security concerns. The Human Rights Committee’s *General Comment No. 27* on the Freedom of Movement highlights that permissible restrictive measures, such as ones based in national security concerns,

¹² *Report on the Operation in 2012 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006* (July 2011) Presented to Parliament pursuant to s.36 of the Terrorism Act 2006.

¹³ Parliamentary Human Rights Joint Committee, *The Terrorism Act 2000 (Remedial) Order 2011: Stop and Search without Reasonable Suspicion (second Report)*, 6th September 2011.

¹⁴ Schedule 7 of the Terrorism Act 2000 and accompanying Codes of Practice allow a person detained under this power the right to request the presence of a solicitor, but the police are not obliged to wait for their arrival and, as is often the case, the police can press on with the search and questioning of the individual. Since it is an offense for the detained individual to refuse to cooperate with the search and questioning they are automatically deprived from their right to legal representation during the encounter. Ironically, the right to legal representation is afforded to actual terrorist suspects arrested under Section 41 of the Terrorism Act 2000 but not for innocent people detained at UK ports and airports under Schedule 7 even though they are never suspected of being involved in acts of terrorism.

¹⁵ Home Office (2011) *Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stops and searches Great Britain 2010/11*, London: Home Office.

¹⁶ Home Office (2011).

must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected....The principle of proportionality has to be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law.¹⁷

The disproportionate targeting of ethnic minorities in Schedule 7 stops breaches this fundamental norm governing the application of legitimate national security restrictions on freedom of movement. Non-discrimination is a non-derogable norm, even in times of terrorism. Based on current statistics of the targets of Schedule 7 powers, the provision's use in limiting individuals' freedom of movement is not consistent with non-discrimination obligations.

23. In summary, the legal framework and practice of Schedule 7 stops discriminate against ethnic minorities and violate the right to freedom of movement and to non-discrimination under the CERD, ICCPR, CFR and ECHR. The law should establish a minimum threshold of suspicion on the basis of which individuals can be stopped under Schedule 7. The threshold should be based upon objective facts, information, and/or intelligence, so as to minimize the risk of arbitrary and/or discriminatory application of these stop and search powers.

B. Criminal Justice and Public Order Act 1994

24. **Section 60 of the *Criminal Justice and Public Order Act 1994*** is a provision designed to provide an exceptional response to anticipated violence. Section 60 allows for police to be authorized to search any person or vehicle for weapons in an area where serious violence is reasonably anticipated. This authorization lasts 24 hours and can be extended by another 24 hours. Although the legislation limits "stop and search" to a specific time and place, it does not require police to have any individualized basis of reasonable suspicion.¹⁸
25. Under Section 60, police have the widest discretion and limited safeguards allowing them to utilise generalisations and stereotypes about who is involved in crime rather than objective information. Ministry of Justice data shows higher rates of disproportional stops of ethnic minorities for powers that do not require reasonable suspicion. The rate of stops and searches conducted under Section 60 for black people is 29 times the rate for white people, and for Asian people it is seven times the rate for whites.¹⁹ In addition, an investigation conducted by the Independent Police Complaints Commission (IPCC) into the use of Section 60 stop and search powers in the West Midlands in 2007 confirmed concerns that Section 60 was being used inappropriately to deal with routine crime problems. There was no justifiable reason why normal police powers based on reasonable suspicion were not being used.²⁰ Continuous repeat authorisations under Section 60 have been used to subject certain areas to virtually permanent use of the power to stop and search without reasonable suspicion, in much the same manner as the European Court of Human Rights found to be an abuse of Section 44 of the *Terrorism Act* in the case of *Gillan*. Hence, a power that was intended to respond to exceptional outbreaks of violence is now being routinely and extensively used against black and Asian communities across the UK.
26. In summary, the legal framework governing Section 60 stop and searches discriminates against ethnic minorities and violates CERD Articles 2(1)(a) and (c). The manner in which Section 60 has been applied in practice violates Article 5 and UDHR Articles 2 and 7. An independent review is necessary to determine why a power without reasonable suspicion is needed. The legislation must be amended to ensure that Section 60 authorizations can only be renewed in cases in which new or additional information, or a fresh assessment of

¹⁷ United Nations Human Rights Committee, *General Comment No. 27 "Freedom of Movement,"* UN Doc CCPR/C/21/Rev.1/Add.9, November 2, 1999, at paras 14-15.

¹⁸ Section 60 of the Criminal Justice and Public Order Act 1994 as amended by Section 8 of the Knives Act Subsection 3 allows a superintendent to extend this authorization for a further 24 hours.

¹⁹ Ministry of Justice (2011), *Statistics on Race and the Criminal Justice System - 2010*, London: Ministry of Justice.

²⁰ Independent Police Complaints Commission (2007) *Report into West Midlands Police Misuse of Section 60 Powers*.

the original intelligence, confirms that the threat remains immediate and credible; that authorizations should be subject to judicial and external review; and the Code of Practice should contain stronger recording and public notification requirements to facilitate monitoring and supervision of the use of the power.

C. Police and Criminal Evidence Act 1984

27. Though the failure to require “reasonable suspicion” provisions based on individual behaviour is an on-going concern with UK legislation designed to anticipate and prevent serious violence, legislation in which “reasonable suspicion” is a criteria also results in discriminatory police conduct. Specifically, the *Police and Criminal Evidence Act 1984 (section 1)*, *Misuse of Drugs Act 1971 (section 23)* and the *Firearms Act 1968 (section 47)* – all governed by the *PACE Code of Practice A* – fall into this category. Most stop and searches are conducted under these provisions.
28. National statistics show that under ordinary stop and search powers black people are stopped and searched by the police at seven times the rate of whites, while Asians are stopped and searched at more than twice the rate of whites across England and Wales.²¹ Analysis conducted by the Equalities and Human Rights Commission (EHRC) in 2010 concluded that a number of police forces are using the powers in a manner that is disproportionate and possibly discriminatory. The EHRC assessed how many more stops and searches are conducted on black and Asian people than would be the case if they were stopped and searched at the same rate as white people. In 2007-08, there were 145,000 “excess” stop and searches conducted on black people and 43,000 “excess” stop and searches on Asian people in England and Wales.²²
29. In 2009–10, 1,141,839 stops and searches were conducted in England and Wales.²³ Yet, the rate of arrests resulting from those stop and searches was only nine per cent.²⁴ This raises the question of how well stop and search is being targeted. The evidence shows that out of every 100 recorded stop and searches based on “reasonable suspicion,” about 91 are fruitless; that is, they do not result in an arrest for the behaviour suspected, or for any other reason. The impact of this practice on ethnic minorities is striking. In comparison to their white counterparts, “black people are almost twice as likely to enter the criminal justice process as a result of being stopped and searched by the police” in the UK.²⁵ Secondly, as the arrest rate resulting from stop and search is similar for all groups, seven times as many innocent black people and twice as many innocent Asian people are searched in comparison to their white counterparts.²⁶
30. In September 2011, the CERD Committee’s Concluding Observations urged the UK “to review the impact of “stop and search” powers on ethnic minority groups under various pieces of legislation in the State party.” We support this Observation, and further recommend that effective external oversight needs to be put in place to hold individual police forces to account for their use of the powers and the extent to which they disproportionately affect ethnic minorities. Such measures should be accompanied by further practical guidance for officers and ensure that the threshold of reasonable suspicion is a meaningful safeguard.

D. Undermining of stop and search accountability mechanisms

31. In March 2011, the UK government removed the requirement of recording of all “stops” and reduced the recording of “stop and search”.²⁷ This fundamentally weakens existing accountability structures and the ability for victims to seek redress. This weakening has been facilitated through amendments to the *Police and Criminal Evidence Act (PACE) Code of Practice A*, which governs the use and recording of stop and search. These changes give individual police forces the discretion to choose whether or not to record “stops” and to reduce the information recorded on “stop and search.” The *Police and Criminal Evidence Act (PACE)* was

²¹ Ministry of Justice (2011), *Statistics on Race and the Criminal Justice System - 2010*, London: Ministry of Justice.

²² Equalities and Human Rights Commission (2010) *Stop and Think: A Critical Review of the Use of Stop and Search Powers in England and Wales*. London: EHRC.

²³ Ministry of Justice (2011).

²⁴ Ministry of Justice (2011).

²⁵ Home Affairs Select Committee (2009). *The Macpherson Report - Ten Years On*, session 2008 – 2009.

²⁶ Home Affairs Select Committee (2008) *Young Black Men and the Criminal Justice System, Second Report of Session 2006–07*

²⁷ The Police and Criminal Evidence Act 1984 Code of Practice, 7th March 2011.

originally introduced in 1984 with the aim of setting national minimum standards which would cover the country as a whole. It was partly introduced to end the “postcode lottery” that saw wildly varied powers and recording standards used by different forces. The most recent amendments were made with no public consultation and little assessment of the impact on ethnic minority communities. There is a danger that the changes will reinstate a “postcode lottery,” with different levels of recording and service to communities in different policing areas.

26. Under these changes, individual police forces have the discretion to choose whether they will continue to record the name and address of the person searched, whether any injury or damage was caused as a result of the search and whether anything was found as a consequence of the search. The failure to record the name of the person stopped on the form makes it impossible to measure “repeat stop and searches” and for victims to demonstrate a pattern of stops amounting to “discrimination, harassment or victimization” as outlawed in the UK *Equality Act 2010*. There are long standing concerns about repeat stop and searches and the use of “stop and search” to target certain individuals or communities, and without recording the name of the person stopped it will be difficult to assess the validity of these concerns and to use legal avenues to remedy it. Equally, the removal of the recording of whether there was any injury or damaged caused as a result of the search makes it impossible to measure any misuse of force. It also leaves the police open to complaints about use of force or malicious damage that cannot be substantiated and those individuals stopped unable to demonstrate injury or damage and seek redress.
27. No effective protection or remedy exists for “lesser” encounters with police that fall outside the statutory “stop and search” powers – such as “stops” or “stop and account.” In these cases, police officers can detain members of the public and ask them to account for their actions, behaviour or presence in an area but do not go on to search them. The recent changes to PACE remove previous regulatory requirements for the police to record all stops. Police forces may reinstate the recording of stop and account when there are local concerns about the disproportionate use of stops, but the decision rests entirely in police hands, denying local communities a role in decision-making. The removal of a legal requirement to record stops means that it is possible that such stops will *not* be recorded, making it impossible for communities to demonstrate there are local concerns in order to require police forces to reinstate recording. In an important positive development, the London Metropolitan Police Service decided in September 2011 to keep recording stop and accounts. The MPS stop and accounts represent approximately half of stop and accounts recorded nationally. However, other police forces throughout the country are yet to follow suit, raising concerns that individuals outside the MPS jurisdiction will not have an avenue to demonstrate discriminatory practices and hence seek an effective remedy to rights violations.
28. CERD Article 6 provides everyone with the right to “effective protection and remedies, through the competent national tribunals and other State institutions” in the UK. In the Committee’s 2003 Concluding Observations for the UK, it noted its concern about the disproportionate stop and searches directed at ethnic minorities, the Committee encouraged the UK to ensure that all “stops and searches” are recorded and that a copy of the record form was given to the person concerned.²⁸ These recommendations were ignored and in its 2011 Concluding Observations, the Committee again recommended that *all stops are properly recorded*, whether or not leading to searches, and that a copy of the record is provided to the person concerned for all such incidents in order to safeguard the rights of the people subject to these laws and to check possible abuse. The Committee warned that the current laws and practices “may not only encourage racial and ethnic stereotyping by police officers but may also encourage impunity and fail to promote accountability in the police service for possible abuses.”²⁹

²⁸ *Concluding Observations of the Committee on the Elimination of Racial Discrimination: United Kingdom of Great Britain and Northern Ireland*, U.N. Doc CERD/C/63/CO/11, December 10, 2003, at 5, para 19.

²⁹ *Concluding Observations of the Committee on the Elimination of Racial Discrimination: United Kingdom of Great Britain and Northern Ireland*, U.N. Doc CERD/C/GBR/CO/19-20, September 14, 2011, at .4. para.18.

RECOMMENDATIONS TO THE UPR WORKING GROUP

29. The Justice Initiative and StopWatch urges the UPR Working Group on Human Rights to address ethnic profiling in stop and search when it conducts its Universal Periodic Review of the United Kingdom. In particular, we urge the Human Rights Council to ask the United Kingdom's state representatives questions that would clarify the following:

- What measures are being taken to eliminate racial discrimination in policing by reducing the disproportionate use of “stop and search” powers against ethnic minority communities?
- In light of the concerns of the UK Joint Parliamentary Committee on Human Rights and Independent Reviewer of Terrorism Legislation with respect to the new section 47a power, without changes to the Order and Code of Practice how can the power be made EHRC compliant?
- In the light of the ECHR decision in *Gillan*, what steps does the UK government now intend to take to review other powers to stop and search without reasonable suspicion under Section 60 of the *Criminal Justice and Public Order Act* and Schedule 7 of the *Terrorism Act 2000*?
- Without recording the use of stops, how will communities be able to demonstrate concerns about disproportionate and ineffective use?
- Without recording the names of individuals stopped and searched, how can those who perceive themselves to be unfairly targeted produce evidence of discrimination under the *Equality Act 2010*?

30. In its recommendations, we urge the UPR working group to ask the UK to:

- Publicly acknowledge the problem of ethnic profiling in stop and search and commit to reducing its disproportionate use against ethnic minority communities. This should include the setting of targets for the reduction of disproportionality and a timeline for achieving this goal;
- Conduct an independent review into the legal framework and use of Schedule 7 of the *Terrorism Act 2000*, the *Criminal Justice and Public Order Act 1994*, and the *Police and Criminal Evidence Act 1984* with a specific focus on any discriminatory impacts;
- Amend existing legislation governing the exceptional powers of section 47a and Schedule 7 of the *Terrorism Act 2000* and Section 60 of the *Criminal Justice and Public Order Act 1994* to ensure it is compatible with its international obligations under the ECHR, CERD, ICCPR and CFR, and that the legislation contains adequate legal safeguards against arbitrary and discriminatory use;
- Amend the Code of Practice for use of stop and search under Section 1 of the *Police and Criminal Evidence Act 1984* to strengthen the safeguard of reasonable suspicion to ensure it is a meaningful constraint on police behavior;
- Accept CERD Recommendation 18 and reinstate the national requirement that police forces fully record all “stop and account” and “stop and search” under all powers; and put mechanisms in place to ensure that there is effective oversight of the data and local community monitoring;
- Recommend a range of further steps to address ethnic profiling in practice, including through judicial and disciplinary accountability and oversight of police practices as well as through clear commitment and a comprehensive action plan.