

ETHNIC PROFILING IN STOP AND SEARCH IN THE UK

**Submission by the Open Society Justice Initiative and StopWatch for
consideration by the United Nations Commission on the Elimination of Racial
Discrimination, at its 79th Session, on the occasion of its Periodic
Review of the United Kingdom,**

August 23-24, 2011

CONTENTS

	Paragraphs
I. Executive Summary	
The Open Society Justice Initiative	2
StopWatch	3
Summary	4
II. Background	5 – 8
III. Violations by the United Kingdom - Article 2 and Article 5	9 - 11
The Terrorism Act 2000	12 - 20
Criminal Justice and Public Order Act 1994	21 - 24
Police and Criminal Evidence Act 1984	25 -29
Article 6	31 - 38
III. Conclusions, Questions and Recommendations	39 - 42

I. Executive Summary

1. The Open Society Justice Initiative (“the Justice Initiative”) and StopWatch tender this submission detailing the prevalence of ethnic profiling in stop and search practices in the United Kingdom. In preparation for the UK’s periodic review by the Committee on the Elimination of Racial Discrimination (“the Committee”), this report highlights discriminatory stop and search laws, policies and practices which violate the International Convention on the Elimination of All Forms of Racial Discrimination (the “Convention”).
2. The 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. We foster accountability for international crimes, combat racial discrimination and statelessness, support criminal justice reform, address abuses related to national security and counterterrorism, expand freedom of information and expression, and stem corruption linked to the exploitation of natural resources. 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, Open Society Justice Initiative, Release, Runnymede Trust, School of Law, Kings College London, Second Wave, and Turning Point.
4. Together, our central contention is that police in the UK disproportionately target ethnic and religious minorities for stops and searches as a matter of everyday practice. This practice – known as “ethnic or racial profiling” - is more pronounced in exceptional stop and search powers that allow officers to search without reasonable suspicion. The sustained evidence of ethnic profiling in stop and search practices, together with the UK Government’s weakening of accountability structures and failure to take the necessary steps to eliminate and provide effective judicial protection against such practices, violates Articles 2, 5 and 6 of the Convention. **Accordingly, we ask that the Committee:**
 - *Underscore its concern that ethnic profiling in stop and search by the police continues unabated, and has worsened in some respects, notwithstanding the Committee’s observations from 2003;*
 - *request a tightening of the laws governing the operation of stop and search under the Terrorism Act 2000 and the Criminal Justice and Public Order Act 1994 to ensure compatibility with CERD;*
 - *request that authorities reinstate a national requirement for police forces to fully record and monitor “stops” and “stop and search” under all powers; and*
 - *recommend further steps to eliminate ethnic profiling in law and practice, including through judicial and disciplinary accountability and oversight of police practices, as well as through clear commitment and a comprehensive action plan.*

II. 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. The “disproportionately high number of ‘stop and searches’...carried out by the police against members of ethnic or racial minorities” was a specific concern of this Committee’s Concluding Observations when it last reviewed the UK in 2003.¹ The Committee’s concerns align with domestic ones. Anxieties over excessive use of “stop and search” police powers against ethnic minorities have a long history in Britain. “Stop and search” was cited as one of the causes of the Brixton riots in 1981.² Almost two decades later, the highly influential *Stephen Lawrence Inquiry Report* of 1999, which investigated UK police practices, recognized institutional racism as a factor in the nationwide ethnic disparities in stop and search figures. The report’s author – a retired High Court judge, Sir William Macpherson -- acknowledged the issue’s complexity but insisted that there remained “a clear core conclusion of racist stereotyping.”³ The 2009 Home Affairs Select Committee report on progress since the Lawrence Inquiry noted that minority ethnic people remain “over-policed and under-protected within our criminal justice system.”⁴
6. Still today, the use of “ethnic profiling” remains a stubborn feature of stop and search practices in the UK. “Ethnic profiling” is 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.⁵ The Equalities and Human Rights Commission’s (EHRC) investigation into the use of stop and search powers concluded that a number of police forces are using the powers in a manner that is disproportionate and possibly discriminatory.⁶
7. The legal basis for police ‘stop and search’ powers 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, contained in Section 60 of the *Criminal Justice and Public Order Act 1994* and Section 44s and 47a and Schedule 7 of the *Terrorism Act 2000*, has substantially increased since the UK’s last CERD review.⁷
8. The UK’s stop and search practices are frequently justified on the basis of countering terrorism, averting potential violence or preventing crime. Yet the use of stop and search has not proven effective in achieving any of these goals. Instead, stops and searches disproportionately target ethnic minorities in the UK, continue to alienate and stigmatize whole groups, and violate the UK’s CERD obligations.

II. Violations by the United Kingdom

Article 2 and 5 violations

9. 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 CERD obligations. The UK’s failure to adequately amend discriminatory legislation required by 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 Article 2(1)(a).
10. Article 5(a) provides for the “the right to equal treatment before the tribunals and all other organs administering justice,” while Article 5(d)(i) recognizes the “the right to freedom of movement.” CERD does not provide an explicit right to privacy, however the Committee has recognized in its General Recommendation XX that “the rights and freedoms mentioned that Article 5 do not constitute an exhaustive list.” For the purposes of this submission, the protection of “other civil rights” under Article 5(d) is imputed to include the right to privacy. In analyzing Article 5(a), we regard the UK police as an “organ administering justice.” In assessing Article 5(d)(i) violations, we also draw on the *International Convention on Civil and Political Rights* (ICCPR), which sets out legitimate restrictions on freedom of movement. 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.” They must be consistent with other ICCPR rights, which includes the ICCPR Article 2 right not to be discriminated against on account of, inter alia, race.⁸
11. Police use ethnic profiling in stop and search practices in a way which violates the right to equal treatment under Article 5(a). The disproportionate targeting of minorities in stop and search practices fails to comply with the parameters set out for use of legitimate national security restrictions on the right to freedom of movement under Article 5(d)(i). The right to privacy under Article 5(d) has been violated by the intrusive placement of personal information gathered in stop and searches on counter-terrorism databases in a way that disproportionately affects ethnic minorities. To the extent that the non-discrimination requirements under Article 2 can be seen to underpin the enjoyment of rights identified in Article 5, we have analyzed the two provisions together in this section. Under this analysis, three main laws - the *Terrorism Act 2000*, *Criminal Justice and Public Order Act 1994*, and the *Police and Criminal Evidence Act 1984* – require further review and amendment to stop violating Article 2(1)(c). Each has perpetuated discrimination against ethnic minorities.

(a) The Terrorism Act 2000

12. 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 CERD compliance. Two sets of provisions within the *Terrorism Act 2000* continue to be a cause for concern: Sections 44(1) and (2) (replaced now by Section 47a), and Schedule 7.
13. **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. A 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.”⁹ 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.¹⁰ The *Gillan* decision also noted that stop and search under Section 44 amount to a deprivation of liberty within the meaning of Article 5 § 1.¹¹
14. 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 the *Terrorism Act 2000 (Remedial) Order 2011* on March 18, 2011.¹² 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 authorise 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 authorisation covers.
15. In June 2011, however, the UK Parliamentary Joint Committee on Human Rights found that the new Order does not go far enough to protect rights with which CERD is concerned.¹³ The Committee recommended that more safeguards need 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 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 or a fresh assessment of 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.
16. If adopted by the government, these recommendations will assist in curtailing ethnic profiling in the use of the Section 47a power. Such changes are both urgent and necessary

in light of the impact these provisions have had on ethnic minorities. The discretion allowed under Section 44 has resulted in the disproportionate targeting of ethnic minorities, violating Articles 2(1)(a) and 5(a).¹⁴ In 2009-10, 35 percent 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.¹⁵ Indeed, blacks or Asians were up to seven times more likely to be stopped and searched under Section 44 than whites.¹⁶

17. **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.”¹⁷ The *Gillan* decision noted that stops and searches under section 44 that lasted up to 30 minutes amounted to a deprivation of liberty. This is also the case for Schedule 7 stops, where individuals can be detained up to nine hours.
18. The potential for discretionary abuse of this provision against ethnic minorities is significant – and has been demonstrated in practice. A *Freedom of Information Act* request on the use Schedule 7 showed that, in 2009 - 2010, the majority of stops were targeted at people from black and minority ethnic groups, even though they make up less than 10 per cent of the national population. Asian people accounted for 25 percent of Schedule 7 stops, though they make up just five per cent of the national population. Black people accounted for eight per cent of stops, and make up three per cent of the population. People from other minority ethnic groups (including Chinese and ‘mixed race’) accounted for 22 per cent of stops, though they represent only one per cent of the population. The targeting of black and minority ethnic groups is even more marked when the most intensive Schedule 7 stops -- those that last over one hour – are considered. Of those stops, 41 per cent were of Asians, 10 per cent were of blacks and 30 per cent were of ‘other’ ethnic groups, leaving fewer than 20 per cent that were of whites.¹⁸ One calculation based on the above figures reveals that Asian people are up to 42 times more likely to be stopped and detained under Schedule 7 than their white counterparts.¹⁹
19. 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,

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.²⁰

The way in which the permissible restrictions on freedom of movement are being used under Schedule 7 powers violates Article 5 (d)(i). Non-discrimination is a non-derogable norm, even in times of terrorism. 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.

20. Ethnic profiling in Schedule 7 is also contributing to the over-representation of ethnic minorities on the national DNA database. For example, between the years 2004 and 2009 over 1,200 persons have had their DNA and fingerprints taken under Schedule 7, despite not being under arrest.²¹ Since these individuals - the overwhelming majority of whom are innocent - also have their DNA data stored on a separate counter terrorism DNA (CT DNA) database along with suspected and convicted terrorists.²² The Human Rights Committee has indicated in its *General Comment 16 on the right to respect of privacy, family, home and correspondence, and protection of honour and reputation*, that “the gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law...[and]... In order to have the most effective protection of his private life, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes.” Individuals whose personal information is stored on this database have no way of ascertaining what personal information of theirs is kept in this database, nor the purpose for which such information will be used. This constitutes a violation of Article 5(d) to the extent that it impacts the right to privacy.

In summary, the legal framework and practice of Schedule 7 stops discriminate against ethnic minorities and violate Articles 2(1)(a) and (c) and Articles 5(a), (d) and (d)(i). A minimum threshold of suspicion on which individuals can be stopped under Schedule 7 should be introduced 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. The legislation should be amended to ensure that DNA and fingerprints are only taken from people who have been *arrested* rather than detained at UK ports after a Schedule 7 examination. In addition, data on Schedule 7 stops that is already collected by the UK Home Office – but not routinely shared – should be monitored under the same recording framework as all other stop and search powers, and shared systematically to allow external monitoring and oversight.

(b) The Criminal Justice and Public Order Act 1994

21. Section 60 of the *Criminal Justice and Public Order Act 1994* is a provision designed to provide exceptional responses 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 basis of reasonable suspicion.²³

22. Under Section 60, police have the widest discretion and limited safeguards allowing them to utilise beliefs and stereotypes about who is involved in crime rather than objective information. Ministry of Justice data also 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 27 times the rate for white people, and for Asian people it is six times the rate for whites.²⁴ 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 with no justifiable reason why normal police powers based on a reasonable suspicion were not being used.²⁵ It is also the case that 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*.²⁶ 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, violating CERD Articles 2(1)(a) and (c).
23. No external or judicial oversight of local intelligence is used to justify Section 60 authorizations. Little regulation exists to ensure that the intelligence basis given for invoking Section 60 meets legal standards (i.e. that there is a credible threat of serious violence in a defined area), or to see that the power is used consistently within and between different police Forces in the UK.
24. In summary, the legal framework of Section 60 discriminates against ethnic minorities and violates Articles 2(1)(a) and (c) and the practice of Section 60 violates Article 5. An independent review is necessary to determine why a power without reasonable suspicion is needed. The legislation must be also amended to ensure that section 60 authorizations can only be renewed in cases in which new or additional information, or a fresh assessment of the original intelligence, confirms that the threat remains immediate and credible; that authorizations should be subject 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.
24. An investigation into the use of exceptional stop and search powers contained in both the *Criminal Justice and Public Order Act* along with the *Terrorism Act* would be a valuable tool to help ensure greater transparency, monitoring and accountability of police force practices. The UK Equalities and Human Rights Commission conducted an investigation into the use of stop and search under Section 1 powers of the Police and Criminal Evidence Act.²⁷ The UK Home Affairs Committee also analyzed the provisions during its investigation into *Young Black Men in the Criminal Justice System*.²⁸ Conducting a new investigation prompted by the increasing use of exceptional powers, and the extent to which the use of those powers are disproportionately impacting minorities, would be a welcome initiative which the Committee could recommend in its Concluding Observations.

(c) *The Police and Criminal Evidence Act 1984*

25. 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.
26. Requiring officers to formulate grounds of reasonable suspicion based on individual behaviour is a fundamental safeguard against stereotyping and has been established in EU norms.²⁹ Yet in the UK, evidence suggests that the law and guidance are not adequately proscribed to make “reasonable suspicion” a meaningful safeguard on police discretion. Research has consistently shown large differences in how individual police officers understand the concept of reasonable suspicion.³⁰ In 2008 – 09, there were 1,142,763 stops and searches in England and Wales.³¹ Yet, the rate of arrests resulting from stop and search has remained at between 10-12 percent for the last five years.³² 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 88 are fruitless; that is, they do not result in an arrest for the behaviour suspected or for any other reason. “There appears to be limits to the skill of the police officer in distinguishing the person who is actually involved in crime from those for whom a generalized suspicion exists in the police lexicon— urban males wearing hooded sweatshirts, for example.”³³
27. The impact of this practice on ethnic minorities is striking. According to the latest available figures for England and Wales, under the *Police and Criminal Evidence Act* 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.³⁴ Analysis conducted by the UK Equalities and Human Rights Commission (EHRC) has 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.³⁵ This legislation and its impact, then, violate Articles 2(a) and (c).
28. The use of these pieces of legislation for stops and searches also raises Article 5 concerns. 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.³⁶ 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.³⁷
29. The UK Government should review existing measures to understand and combat disproportionality in stop and search. Strategies for the use of stop and search should explicitly recognise the balance that needs to be struck between use of the power to prevent or detect crime and the negative impact its overuse has on public cooperation with, and support for, the police. Such a strategy would focus on halting the increase, and then

reducing the proportion, of stops and searches which detect no crime or criminal intent and whose impact is damaging. 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 ethnic minorities are disproportionately affected by them. Such measures should be accompanied by further practical guidance for officers and ensure that their use of the power is scrutinised to ensure that the threshold of reasonable suspicion is a meaningful safeguard.

Article 6 Violations

31. Article 6 provides everyone with the right to “effective protection and remedies, through the competent national tribunals and other State institutions” in the UK. One way to ensure effective protection and remedies to persons whose CERD rights have been violated through discriminatory stop and search practices was highlighted by this Committee in its 2003 Concluding Observations for the UK. After noting 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.³⁸ Such a recommendation is elemental to ensuring Article 6 compliance. *Stephen Lawrence Inquiry Report* (1999) and Sir Flannigan Report (2008), both of which reviewed UK police practices, stressed the importance of recording of “stop and search.”³⁹ Each highlighted that the practice serves to remind officers of their legal duties and helps to ensure that they are accountable to the individuals they stop, to their supervising officers and to the wider community. More importantly, it also allows victims of ethnic profiling a mechanism by which to seek remedy through the complaints system and ultimately the courts.
32. Yet, rather than implementing the full recording of stops and stop and searches as the Committee recommended, the UK government has removed the recording of “stops” and reduced the recording of “stop and search”. This fundamentally weakens existing accountability structures and the ability for victims to seek redress.
33. This weakening has been facilitated by the March 2011 amendments to the *Police and Criminal Evidence Act (PACE) Code of Practice A*, which governs the use and recording of stop and search.⁴⁰ These changes give individual police forces the discretion to choose whether or not to record “stops” or “stop and account” (described in more detail below) and to reduce the information recorded on “stop and search.” Yet PACE was 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 also a danger that the changes will reinstate a “postcode lottery,” with different levels of recording and service to communities in different policing areas.
34. 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 changes, however, restrict only the level of information

recorded on the stop form and used for internal and external monitoring of stop and search -- not what police collect. All police forces are still required to collect the date; time; place; self-defined ethnicity; object of search; ground for search; and identity of officer carrying out the stop and search. Police officers will also continue to check the Police National Computer (PNC) to identify the person searched and check whether they are wanted in relation to outstanding crimes. These PNC checks are recorded and officers will often make a record in their notebooks and in "intelligence logs." Hence, the police will frequently still record the personal data of the person searched but this record will not be available to the person searched nor for the purposes of supervision and external monitoring.

35. 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*.⁴¹ There are long standing concerns about repeat stop and searches and the use of "stop and search" to target certain individuals or communities,⁴² 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 damage 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.
36. 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 stop and accounts. 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 in fact* be recorded, making it all the more difficult for communities to demonstrate there are local concerns in order to require police forces to reinstate recording.
37. The difficulty of seeking remedy through courts as a consequence of these legal provisions and practices is not offset by the existence of other State institutions that could potentially provide relief. The Home Office Stop and Search Action Team and accompanying Stop and Search Community Panel⁴³ - two bodies set up to try to reduce the disproportionately in stop and searches -- have been disbanded without any consultation or trenchancy about what activities were undertaken and what they achieved. The UK Government has posited that the National Policing Improvement Agency's "Next Steps" Project is an effective remedy for disproportionality in stop and search.⁴⁴ "Next Steps" is a diagnostic audit-based tool to encourage more efficient and effective use of stop and search powers. The NPIA are currently piloting the diagnostic tool in three UK forces: the Metropolitan Police Service, the Merseyside Police and the Dorset Police. However, the tool does not seek to address disproportionality, nor does it involve communities in the evaluation of police activity. To date, the results of the audits have only been shared with the police forces

studied and not made public. There is no external evaluation planned to determine how effective and robust the “Next Steps” project is as a tool for increasing effectiveness and decreasing disproportionality. As the NPIA has no power of enforcement, problems identified during the audit can simply be ignored by police forces, if they wish. While this project may be a good complement to judicial based remedies if it is reformed to consider disproportionality, make findings public and be given enforcement powers, in its current form Next Steps does not provide effective protection or remedy to victims of the disproportionate use of stop and search.

38. The lack of avenues for effective protection and remedy which violate CERD Article 6 can be redressed, at least in part, by amending PACE to require that all stops, stop and accounts, and stops and searches are fully recorded, and the level of information included in the recording is increased to at least include the names and addresses of those stopped. A copy should also be provided to the person stopped.

IV. Conclusions, Questions and Recommendations

39. To date, the British Government has failed to adequately address ethnic profiling in stop and search or to take effective steps to remedy it. In fact, recent changes to the Codes of Practice governing the use of stop and search have undermined accountability and made it difficult for victims of ethnic profiling to effectively seek redress. Considerable flaws mar the legislative framework, which is overly broad, allowing police to conduct highly discretionary stop and searches under exceptional powers, opening the door for discrimination. Furthermore, the legal framework does not provide protection or effective recourse to victims of discrimination by law enforcement officers.
40. We urge the Committee to address ethnic profiling described in this submission when it conducts its periodic review of United Kingdom’s compliance with the Convention. In particular, we **urge the Committee to ask United Kingdom’s representatives questions that would clarify the following:**
- Is the government committed to the elimination of racial discrimination in policing by reducing the disproportionate use of “stop and search” powers against ethnic minority communities?
 - What measures are being taking to monitor the extent of disproportionality in “stop and search” and other police powers such as “stop and account”?
 - What progress was made by the Home Office Stop and Search Action Team, Stop and Search Community Panel? What mechanisms currently exist within the Home Office, National Police Improvement Agency or Department of Justice to engage with communities on this issue and to ensure that the powers are being used fairly?
 - What other measures are being taken by Government and police forces to reduce the extent of disproportionality in “stop and search” and other police powers such as “stop and account”?

- 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 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?

41. In its Concluding Observations **the Committee should express its serious concern about ethnic profiling practices in the United Kingdom and call on the United Kingdom 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 the achievement of this goal.
- 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 the European Convention on Human Rights and CERD, and that the legislation contains adequate legal safeguards against arbitrary and discriminatory use.
- Conduct an independent inquiry into the legal framework and use of Schedule 7 of the *Terrorism Act 2000* and the *Criminal Justice and Public Order Act 1994*, with a specific focus on any discriminatory impact.
- 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, including by issuing guidelines on its interpretation.
- 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 ensure 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.

42. The Committee should also require the United Kingdom’s government to report on its implementation of efforts to eliminate ethnic profiling in its future periodic reports to the CERD.

ENDNOTES

¹ *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, p.5, para 19.

² Scarman L. (1981) *The Scarman Report*. London: HMSO.

³ Macpherson W. (1999) *The Stephen Lawrence Inquiry*. Report of an Inquiry by Sir William Macpherson of Cluny, (Cm 4262-1). London: The Stationary Office, at para. 6.45.

⁴ Home Affairs Committee (2009) *The Macpherson Report - Ten Years On*, session 2008 – 2009

⁵ 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). Criminal and behavioral profiling are accepted and lawful policing tools designed to allow the most efficient allocation of scarce law enforcement resources. As long as the profiles used by police are based on specific information about an individual or factors that are objective and statistically proven to be significant indicators of criminal activity, profiling is legal.

⁶ 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.

⁷ In 2007-08 there was an enormous 215percent in the number of stop and searches under section 44 from the previous year. Disturbingly, the rise included a 322 percent increase in stop and searches of Black people and 277 percent of Asian people. Please see Ministry of Justice (2009) *Statistics of Race and the Criminal Justice System 2007/08*, London: Ministry of Justice. In 2008-09, there was a staggering 282 percent increase in the number of stop and searches under section 60 from the pervious year.. This represents a staggering 282 percent increase in the use of the power last year. Between 2005-06 and 2008-09 the number of Section 60 searches of black people rose by more than 650 percent. Ministry of Justice (2010), *Statistics on Race and the Criminal Justice System - 2008/9*, London: Ministry of Justice.

⁸ International Covenant on Civil and Political Rights, available at <http://www2.ohchr.org/english/law/ccpr.htm/>

⁹ ECtHR, *Gillan and Quinton v. the United Kingdom*, Application no. 4158/05, judgment of January 12, 2010, at 87

¹⁰ *Gillan and Quinton v. the United Kingdom*, at 85.

¹¹ *Gillan and Quinton v. the United Kingdom*, at 57.

¹² 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

¹³ House of Lords and House of Commons Human Rights Joint Committee, *Terrorism Act 2000 (Remedial) Order 2011: Stop and Search without Reasonable Suspicion (Fourteenth Report)*, 7th June 2011

¹⁴ There are no figures available yet documenting the use of the new Section 47a power.

¹⁵ Ministry of Justice (2011), *Police Powers and Procedures England and Wales 2009-2010, Second Edition*, London: Ministry of Justice.

¹⁶ Ministry of Justice (2010), *Statistics on Race and the Criminal Justice System - 2008/9*, London: Ministry of Justice.

¹⁷ Schedule 7of 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.

¹⁸ Federation of Student Islamic Societies (FOSIS) and StopWatch, *Briefing paper on Schedule 7 of the Terrorism Act 2000*, May 2011.

¹⁹ Dodd, V. (2011) “Asian people 42 times more likely to be held under terror law,” *The Guardian*. 23rd May 2011

-
- ²⁰ United Nations Human Rights Committee, *General Comment No. 27 "Freedom of Movement,"* UN Doc CCPR/C/21/Rev.1/Add.9, November 2, 1999, paras 14-15, available at <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/6c76e1b8ee1710e380256824005a10a9?Opendocument>
- ²¹ Federation of Student Islamic Societies (FOSIS) and StopWatch, *Briefing paper on Schedule 7 of the Terrorism Act 2000*, May 2011.
- ²² MPA (2011) *Protecting the innocent: The London experience of DNA and the National DNA Database. Report by the MPA Civil Liberties Panel*. Metropolitan Police Authority. June 2011
- ²³ 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
- ²⁴ Ministry of Justice (2010), *Statistics on Race and the Criminal Justice System - 2008/9*, London: Ministry of Justice. Accompanying table S3.05a 0809. Population data taken from previous year: Ministry of Justice (2008), *Statistics on Race and the Criminal Justice System - 2006/7*, London: Ministry of Justice.
- ²⁵ Independent Police Complaints Commission (2007) *Report into West Midlands Police Misuse of Section 60 Powers*.
- ²⁶
- ²⁷ 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.
- ²⁸ Home Affairs Select Committee (2008) *Young Black Men and the Criminal Justice System, Second Report of Session 2006–07*
- ²⁹ In *Gusinski* and other case law, the European Court of Human Rights has established that: "suspicion must be based on reasonable grounds that form an essential part of the safeguard against arbitrary arrest and detention. The fact that a suspicion is held in good faith is insufficient. The words 'reasonable suspicion' imply the "existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offense." *Gusinskiy v. Russia*, App. No. 70276/01, Eur. Ct. Hum. Rts, Judgment of May 29, 2004, § 53; *Nechiporuk and Yonkalo v. Ukraine*, 21 April 2011, 175. The Court reiterates that a "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence (see *Fox, Campbell and Hartley v. the United Kingdom*, August 1990, § 32, Series A no. 182).
- ³⁰ Quinton, P., N. Bland, et al. (2000). *Police Stops, Decision-making and Practice*. London, Home Office; Sanders and Young (2006), *Criminal Justice*. Oxford: Oxford University Press.
- ³¹ Ministry of Justice (2010), *Statistics on Race and the Criminal Justice System - 2008/9*, London: Ministry of Justice.
- ³² Home Office (2011) *Police Powers and Procedures England and Wales 2009/10*, London, Home Office.
- ³³ Bowling, B (2007) "Fair and Effective Policing Methods: Towards 'Good Enough' Policing" in *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 8:1, 17 — 32, at 26.
- ³⁴ Ministry of Justice (2010), *Statistics on Race and the Criminal Justice System - 2008/9*, London: Ministry of Justice.
- ³⁵ 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.
- ³⁶ Home Affairs Committee (2009) *The Macpherson Report - Ten Years On*, session 2008 – 2009.
- ³⁷ Home Affairs Select Committee (2008) *Young Black Men and the Criminal Justice System, Second Report of Session 2006–07*
- ³⁸ *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, no 19.
- ³⁹ Macpherson W. (1999) *The Stephen Lawrence Inquiry*. Report of an Inquiry by Sir William Macpherson of Cluny, (Cm 4262-1). London: The Stationary Office, recommendation 61; Sir Ronnie Flanagan (2008), *The Review of Policing: Final Report*, at paras. 5.56 - 5.63.
- ⁴⁰ The Police and Criminal Evidence Act 1984 Code of Practice, 7th March 2011.
- ⁴¹ Equality Act 2010, available at: http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf
- ⁴² See for example, Cohen, D. and Lydall, R. "Black Met adviser stopped and searched more than 100 times," *The Evening Standard*, 16th October 2009.
- ⁴³ The Home Office Stop and Search Action Team and accompany Stop and Search Community Panel were formed in with a remit to produce a plan for change and reducing disproportionality within six months to be sent to every police force in the country, setting out procedures on how to deploy stop and search, including what might constitute reasonable grounds for suspicion.