

Universal Periodic Review – United Kingdom: May 2012

The Justice Initiative and StopWatch urges the UPR Working Group to address ethnic profiling in stop and search practices when it conducts its Universal Periodic Review of the United Kingdom. In particular, we urge members of the UPR Working Group, to ask the following questions to the UK:

- 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 that section 47a of the Terrorism Act does not contain adequate human rights protections in the conduct of police stops and searches, what steps are the UK planning to take to bring the provision into line with international human rights standards?
- In the light of the European Court of Human Rights decision in *Gillan*, what steps does the UK government now intend to take to review other powers to stop and search that do not require reasonable suspicion, such as Section 60 of the Criminal Justice and Public Order Act and Schedule 7 of the Terrorism Act 2000?
- Without recording the use of stops (“stop and accounts”) and the names of individuals stopped and searched, how will individuals and communities be able to demonstrate concerns about disproportionate and discriminatory use of stop and search powers that may amount to discrimination under the Equality Act 2010?

We urge members of the UPR working group to recommend the UK to:

- Publicly acknowledge the problem of ethnic profiling in stop and search practices and clearly commit to reducing the disproportionate use of stops and searches against ethnic minority communities, including by setting targets for the reduction of disproportionality and a timeline for achieving this goal;
- Take further steps to address ethnic profiling in practice, including through ensuring effective judicial and disciplinary accountability and oversight of police practices;
- Conduct an independent review into the legal framework and use of Schedule 7 of the Terrorism Act 2000, Section 60 of the Criminal Justice and Public Order Act 1994, and Section 1 of the Police and Criminal Evidence Act 1984;
- 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 UK’s international obligations under the European Convention of Human Rights (ECHR), the UN Convention on the Elimination of Racial Discrimination (CERD), and International Covenant on Civil and Political Rights (ICCPR), and that the legislation contains adequate legal safeguards against arbitrary and discriminatory use;
- Amend the Code of Practice for use of stop and search powers 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 and an effective protection against discriminatory exercise of such powers;
- In line with CERD Recommendation 18 for the UK (2011) reinstate the national requirement that police forces fully record all “stop and account” and “stop and search” incidents under all powers and put mechanisms in place to ensure that there is effective oversight of the data and local accountability.

Racial profiling in the UK

Despite the 2008 UPR recommendation accepted by the UK to “continue to review all counter-terrorism legislation and ensure it complies with the highest human rights standards,” the use of ethnic profiling continues to be a major concern in the UK. The legislative reviews by the UK to date have not had the effect of eliminating ethnic discrimination in the use of “stop and search” powers granted to the police to prevent terrorism. Three sets of legislation are of particular concern in this regard.

Section 47a of the *Terrorism Act 2000* allows police to stop and search individuals in a defined area without reasonable suspicion if an act of terrorism is reasonably suspected and the stop and search is deemed necessary to prevent such an act. The provision was introduced to replace sections 44(1) and (2) following a 2010 European Court of Human Rights judgment in the case of *Gillan and Quinton v. the UK* which found that those provisions were in violation of the right to respect for private life and did not contain adequate safeguards against arbitrariness in the exercise of discretionary police powers to stop and search. In June and September 2011, the UK Parliamentary Joint Committee on Human Rights found that section 47a did not contain adequate human rights protections and called for a review to bring it in line with human rights law. Under Schedule 7 powers, officers at airports and ports are authorized to stop, question and detain individuals without any reasonable suspicion to ascertain whether they are likely to be engaged in acts of terrorism. In 2010-11, 65,684 people were stopped under Schedule 7 and the majority (almost 60 per cent) of those were black or belonged to minority ethnic groups although they account for only around 10 per cent of the national population. In July 2011, the Independent Reviewer of Terrorism Legislation concluded that the discretionary powers in the Terrorism Act remained too broad. However, all of the recommendations made to amend the relevant provisions were rejected by the Home Secretary in July 2011.

The *Criminal Justice and Public Order Act 1994* gives wide discretionary powers to police to search any person or vehicle for weapons in an area where serious violence is reasonably anticipated but does not require any reasonable suspicion against an individual. The authorization is given for 24 hours and can be extended for another 24 hours. Continuous and repeat renewals of the authorizations have meant that some areas have been subject to virtually permanent use of the power to stop and search. Official statistics show that the rate for stop and searches of black people is 29 times that for white people and for Asian people it is seven times the rate for white people.

The *Police and Criminal Evidence Act 1984* has also resulted in discriminatory police conduct despite its criteria of “reasonable suspicion” for stops and searches. Statistics show that under these ordinary police powers black people are stopped and searched at seven times the rate for white people, while Asians are stopped and searched at more than twice the rate of whites. Only 9 per cent of these stop and searches lead to arrest and the majority of these are for cannabis possession.

In September 2011, the Committee on the Elimination of Racial Discrimination recommended that the UK “review the impact of ‘stop and search’ powers on ethnic minority groups under various pieces of legislation.” The Committee 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. We further recommend that an effective external oversight be put in place to hold police forces to account for their use of the powers and the extent to which they disproportionately affect ethnic minorities.