

Call for inputs for the preparation of the report of the United Nations High Commissioner for Human Rights pursuant to Human Rights Council resolution 43/1 on the “Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers”

Request: Information regarding specific incidents of alleged violations of international human rights law against Africans and people of African descent by law enforcement agencies, especially those incidents that resulted in the death of George Floyd and other Africans and people of African descent.

10 a. Protests

At the recent Black Lives Matter protests in London (and across the UK), practices by the police have violated protesters’ rights to assembly, expression, privacy, liberty and security of person under the Universal Declaration of Human Rights (UDHR). They have also, as evidenced by the reports of our own Legal Observers as well as [a recent report from Netpol](#), imposed these practices on Black protesters far more than other protesters. This pattern of abuse is therefore also breaching Africans’ and people of African descent’s right to protection against discrimination (Article 7 UDHR). The fact that these policies are ongoing, and the state has not taken any steps to limit them, also breaches the state’s obligations under Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICEARD).

20 The right to freedoms of assembly and expression (Articles 19 and 20 of the UDHR) are exercised, *inter alia*, in peaceful protest. However, law enforcement have unlawfully limited the right to protest of many protesters across the UK, and attempted or threatened to limit the rights of many more. Since April the UK has been under stringent Coronavirus Regulations. It is understandable that regulations which protect public health through proportionate restrictions should be put in place. As such, the regulations rightly put safety requirements in place, including mask-wearing and social distancing. Nevertheless, it was understood that making peaceful political protest illegal would not be proportionate, and so they were explicitly exempt from the restrictions provided they were organised in accordance with the safety requirements. Unfortunately, the police in London and several other cities tried to use these regulations to limit protests, even when they conformed to the

30 safety requirements. This was particularly used against Black protest organisers; the most well-documented case of [Ken Hinds](#) showed this unlawful racial discrimination in practice. Over the November coronavirus lockdown in the UK, the government brought in even more stringent regulations which were ambiguous regarding the right to protest; they did not explicitly allow it but

created generic exemptions which potentially covered protests. Our group is in contact with the organisers of several protests, in order to coordinate our legal support. The metropolitan police used the November regulations to threaten even more protest organisers, stating that any protest they organised would be illegal, even if they fulfilled the ambiguous requirements of the regulations. We know of several protests which were called off because of this threat, stifling the rights of assembly and expression. Once again, the main organisers affected by this were Black. As such, over 2020, 40 police across the UK - but particularly in London - have unlawfully breached people's rights to assembly and expression by attempting to limit peaceful protests, sometimes successfully. This breach of rights has been inflicted particularly upon protest organisers of African descent, therefore also breaching their protection against racial discrimination under the UDHR and ICEARD.

The right to liberty and security (Article 3 of the UDHR) of many protesters has been breached through oppressive police tactics, including unlawful detention, physical assault and battery. The unlawful detention of several hundreds of protesters manifested through the use of "kettling" by the UK police, particularly in London. Kettling is a controversial police tactic by which they restrict the movement of large groups of peaceful protesters, without needing to suspect that the protesters have committed any crimes. The guidance states that when police officers believe 50 that limiting a group of peaceful protesters might "prevent a breach of the peace", they can create a kettle. This does not mean that the protesters have to have been violent or aggressive, or have shown any signs that they might become violent or aggressive. The police even use the kettle on a group of protesters when they believe that a separate group might "breach the peace". When a kettle is put in place, the police (usually using riot gear such as vans, helmets, shields and batons) create a cordon around a group of protesters, preventing any of them leaving a certain area. They physically push back any protesters who do try to leave – however peaceful the protesters might be – and often move the cordon closer and closer to restrict the area within which the protesters are held. The police are able to maintain these cordons for several hours without providing toilets, food, water or medication to members of the public within, including vulnerable people such as pregnant 60 women or people with medical conditions. The most well-documented use of kettles in 2020 were during the peaceful BLM marches in Whitehall, London [on 6th and 7th June](#). As well as the news reports, we had several legal observers in attendance who made careful notes of what happened on both evenings. The police cordons formed around peaceful protesters who had shown no signs of aggression. In both cases our observers noted that the atmosphere was largely calm before the kettles started. The police then emerged in riot gear without provocation and formed cordons around the group. They held people within these cordons for five hours, until early in the morning. These peaceful protesters, who were not suspected of any crimes, were denied access to toilets for

70 this time. They were also not given any water (though police officers were) and many who had medical issues such as diabetes were not allowed to leave to access their medicine, even after providing documents proving their conditions. Our LOs witnessed multiple young protesters being reduced to tears by the experience, and several who appeared to have panic attacks. Most worryingly, the police did not even try to claim that they were preventing a breach of the peace. When asked, multiple officers confirmed that these peaceful protesters were kept in a small space for hours under threat of protest or physical assault so that the police could “identify” an individual who was suspected of previously assaulting a police officer and “may” have been in the crowd. There is no evidence that they ever looked for said individual, and no one was specifically arrested for this charge before the kettle was finally released.

80 Within these kettles, and in other circumstances, police officers also breached protesters’ right to personal security by physically assaulting them. In the protests on the 6th and 7th of June, the protesters had been peaceful before the kettles started. There were scattered reports of one or two protesters throwing plastic bottles, but also wide-spread reports and photo evidence of protesters dancing, chatting and praying. When the police emerged in riot gear and cordoned the protesters off, this clearly – and intentionally – created tensions and aggravated protesters. This was amplified when the police officers moved their lines forward, decreasing the area in which protesters were enclosed and antagonizing those on the edges by physically pushing them forward. These tensions flared at the edges of the kettle, with the police officers threatening with their batons and physically pushing protesters. The most extreme and well-documented form came on the 6th of June, when the police, having aggravated a previously peaceful crowd, then [used mounted police to charge through the crowd](#) within the kettle. This tactic was not only disproportionate and overly aggressive, but so poorly carried out that one police officer fell off of her own horse; when this horse bolted it [knocked over a protester causing serious injury](#). The police have [refused to accept a complaint from the injured woman](#), and refused to admit responsibility for her injuries. Our LOs and [Netpol’s report](#) both noted police officers physically pushing protesters throughout the BLM protests, with particularly vicious behaviour on the weekend of the 6th and 7th. One of our LOs provided a witness statement to us in which they documented the police officers pushing peaceful protesters to the ground and using their batons.

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100 The right to privacy (Article 12 of the UDHR) of many protesters and protest organisers has been breached through unlawful questioning and the apparent use of Automatic Facial Recognition at protests. In the UK the police only have the right to demand the details of people who are suspected of a crime. Members of the public are otherwise entitled to refuse to give their details when questioned, and cannot be coerced into answering through threats of arrest or violence, or

through restriction of their liberty of movement through detention. Nevertheless, police in the UK have reportedly made a common practice of asking peaceful protesters for their details despite not suspecting them of any crime, and implying that they will be arrested if they do not provide these details. This was seen and documented in its most explicit form on the weekend of the 6th and 7th of June when several of our legal observers attended protests in Whitehall. On each of these evenings the police kettled the protesters unlawfully, as discussed above. When they released people from these kettles, they did so individually or in pairs, through a single exit point in the cordon. When protesters approached this exit they were accompanied by a police officer (in some cases two),
110 taken away from the main crowd and then stopped. At this point they were asked a series of questions about their details. Several of them were told that their details were being collected under a blanket power under [Section 50 of the Police Reform Act 2002](#). However, this power is only supposed to be used to question individuals who have been acting in an anti-social manner. This is not supposed to be extended to a group in which some people were believed to be acting in an anti-social manner. In addition, when we took witness statements and video evidence from several individuals who were questioned, they were specifically told that *they* were not suspected of any anti-social behaviour, merely some members of the group. The police also used other excuses for other protesters, telling some that they were taking their details to check their criminal records and others that they would simply save their details and contact them if they found they were connected
120 to a crime at a later date. Not only are all of these unlawful reasons to collect citizens' information, but the inconsistent excuses imply that none of them are true. There was also an implicit threat that individuals would be arrested if they did not supply their details. One member of the public stated that he saw someone who refused to give their details escorted away towards a van as if under arrest. This same individual was then put back in to the kettle when they refused to give their details, a threat which was too much for some protesters who had already gone for hours without toilets, water or – in some cases – their medication. All of this questioning was unlawful and breached the protesters' rights to privacy.

While the protesters were questioned upon leaving the kettle on the weekend of the 6th and 7th of June, they were also placed or walked in front of a surveillance van which filmed them. This is
130 in addition to a hand-held camera which was filming them during their questioning. Our organisation is uncertain why they would need to film each protester twice. However, our LOs have witnessed this surveillance van attending multiple BLM protests. It apparently only has one camera on top, at the end of a long arm, as well as significant electrical and computer equipment inside. This van is used at protests even when all police officers have their own body worn cameras, several police officers carry hand-held cameras, police helicopters are often overhead and when the protest is

taking place in heavily surveilled areas of central London (including during a protest in front of New Scotland Yard, the headquarters of the Metropolitan police force). We believe that the only explanation for the repeated use of a single camera with significant computing power when so many ordinary cameras are already attending, is because this camera uses automatic facial recognition technology. The use of this technology is unlawful in public spaces in London, unless the police announce its use through visible posters, informative leaflets and online media posts. None of these were used. The police have not responded when we have asked what this van is used for. We believe that it is another example of the police breaching the right to privacy of every protester they capture.

While these breaches seem indiscriminate, they actually represent racially discriminatory practices against people of African descent for three reasons. Firstly, all of these examples are taken from BLM protests at which people of African descent were heavily represented given the cause of these protests; we have evidence of significantly different tactics at other protests which did not have such a heavy representation of people of African descent. The Extinction Rebellion protests which occurred in the same period, for example, did not attract riot police or kettling. Secondly, our LOs and Netpol's report both provide evidence that the police were particularly aggressive towards Black and Brown protesters compared to white protesters, even in the same situation. Several of our Black and Brown LOs suffered worse treatment than our white LOs when attending the same protests, and the Netpol report documents several examples of aggressive tactics used on Black protesters when white protesters were right next to them. The tactics discussed above which breached protesters' right were all enacted disproportionately on to Black people compared to white people. For example, when our witness stated that he saw a man seemingly being arrested when he refused to give his details when questioned, he mentioned that this man was Black. He actually bumped into this Black man again when walking home from the kettle and found that he had not been properly arrested: for refusing to give his details he had been essentially detained and led away purely in order to scare him. Thirdly, our LOs and Netpol's report both note that the police were more lenient with white anti-BLM protesters who tried to terrorise BLM protests, than with the BLM protesters themselves. Despite kettling and charging peaceful BLM protesters, they let two racist protesters into a BLM protest at Trafalgar Square on 13th June and when they – foreseeably – got into a fight with BLM protesters, they let one of the racist protesters escape on foot (failing to even pursue him) and guarded the other racist protester when he was injured (pepper spraying BLM protesters who were nearby even though they were not apparently involved and carefully escorting the racist protester). As such, all of these breaches come coupled with the breach of Article 7 of the UDHR: prohibition of discrimination.

b. Stop and Search

The UK police continue to breach Article 7 of the UDHR (prohibition of discrimination) when using stop and search powers, as these searches also breach their victims' rights to privacy and their rights to liberty. The rates of stop and search in the UK are widely disproportionate on ethnic lines, with people of African descent vastly more likely to be stopped. Recent independent reports have found that young Black men are [19 times more likely to be stopped and searched in London](#), with this rising up to [40 times more likely](#) when different figures are considered. Even [the government's own research admitted that Black people were at least 9 times more likely](#) to be stopped and searched than white people, which can be assumed to be the most conservative estimate possible. This is particularly pertinent in 2020, when previously falling stop and search figures (which

180 [nevertheless fell less for Black people than white people](#)) started to [rise again during lockdown](#).

Stop and search is defended as a proportionate tool used to investigate and deter crime. However, stop and search in the UK comes in two forms; those based on suspicion (primarily enacted under Section 1 of the Police and Criminal Evidence Act 1984¹ or Section 23 of the Misuse of Drugs Act 1971²), and those enacted without suspicion (known as non-suspicion searches, enacted under Section 60 of the Criminal Justice and Public Order Act 1994³). Each of these is used unlawfully in the UK.

Non-suspicion searches

In the case of *Gillan And Quinton v. The United Kingdom* (Application no. 4158/05)⁴, the UK Government tried to defend the use of non-suspicion searches under Section 44 of the Terrorism Act 2000 against the Claimants' allegations that it breached, *inter alia*, Articles 5 and 8 of the ECHR (and therefore the respective Articles 3 and 12 of the UDHR, but the ECHR will be referenced in this case). Their defence for Article 5 alleged that it was not engaged at all because the detention of the Claimants was not of a sufficiently serious extent (para 55) or, in the alternative, that the use fell under the exceptions provided in Article 5.1(b) being "lawful and justified" (para 55). They also defended Article 8 on similar grounds, claiming that the searches were not extensive enough to engage the Article (para 60); the Court then considered that, if Article 8 was engaged, it would only be lawful if it fell under the exceptions in Article 8(2) of being "in accordance with the law" and "necessary in a democratic society" (para 65). The European Court of Human Rights (ECtHR) held

¹ *Police and Criminal Evidence Act 1984*, c. 60.: <https://www.legislation.gov.uk/ukpga/1984/60/section/1>

² *Misuse of Drugs Act 1971*, c. 38.: <https://www.legislation.gov.uk/ukpga/1971/38/section/23>

³ *Criminal Justice and Public Order Act 1994*: <https://www.legislation.gov.uk/ukpga/1994/33/section/60>

⁴ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-96585%22%5D%7D>

200 that there was a violation of Article 8. It also found that Article 5 was engaged, but did not need to prove that it was violated as Article 8 had been. Nonetheless, the Government's defence would therefore have had to rely on the breach falling within the exceptions of Article 5(2). The violation of Article 8 for Section 44 searches is also relevant to Section 60 searches and, while violation of Article 5 was never confirmed, it is still engaged for Section 60 searches and the requirements for Article 5(2) exceptions are not fulfilled.

210 Section 60 allows an officer of the rank inspector or higher to authorise non-suspicion searches within a certain area for 24 hours. The officer's justification for this authorisation simply needs to be a belief that an incident involving serious violence has taken place, that such an incident *may* take place or that people are carrying offensive weapons in the area without good reason. If the officer believes any of these three things and that it is "expedient" to authorise searches, they can do so. Once this authorisation has been given, a constable may "stop any person or vehicle and make any search he thinks fit whether or not he has any grounds for suspecting that the person or vehicle is carrying weapons or articles of that kind".

220 In *Gillan And Quinton v. The United Kingdom*, the ECtHR stated that Section 44 searches breached Article 8 because they were not "in accordance with the law". This judgment was based on the Court's decision that a belief in 'expediency' is not a sufficient standard to hold an officer's discretion to; the officer's discretion should be limited to what is "necessary" to achieve the goals of the searches (para 80). If we apply the same standards here, then Section 60 searches are also unlawful, as they also rely on the officer's belief in 'expediency'. Further, the question of 'proportionality' was brushed aside by previous courts (including the Court of Appeal and the House of Lords) because they believed that it would "be impossible to regard a proper exercise of the power... as other than proportionate when seeking to counter the great danger of terrorism"⁵ and that "[t]he disadvantage of the intrusion and restraint imposed on even a large number of individuals by being stopped and searched cannot possibly match the advantage that accrues from the possibility of a terrorist attack being foiled or deterred by the use of the power."⁶ Each of these was based on balancing an individual's right to privacy against the extreme potential damage which a terrorist attack could inflict. However, in the case of Section 60 searches, there is no such extreme damage to be avoided. The definition of "incident involving violence" is broad and could include non-fatal events. Meanwhile, a belief that people "may be carrying offensive weapons in the area" does not require any potential violence at all. Section 60 searches can therefore be considered too

⁵ <https://publications.parliament.uk/pa/ld200506/ldjudgmt/jd060308/gillan.pdf> para 29

⁶ <https://www.bailii.org/ew/cases/EWCA/Civ/2004/1067.html> para 50

230 discretionary, just as Section 44 searches were, while also being grossly disproportionate for their aims. They therefore similarly fail to be “in accordance with the law” and therefore violate Article 8 rights to privacy.

When considering Article 5, the UK Government’s defence stated that searches under Section 44 were not restrictive enough to engage the Claimants’ right to Liberty. These searches took less than 30 minutes, were not intended to restrict liberty, carried only the threat of arrest rather than actual arrest, were not confined in a restricted place and took place in public rather than custody. The Court rejected all of these, stating that while it could be a matter of degree of restriction, these practices were “indicative of a deprivation of liberty within the meaning of Article 5”. The searches conducted under Section 44 are exactly the same as those which are conducted
240 under Section 60. Both comply to Code A of the Police and Criminal Evidence Act 1984. Therefore, Article 5 is also engaged for these searches.

The UK Government also contended that, if Article 5 was engaged, then the searches were justified under Article 5.1(b): “the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law”. Unfortunately for us, the Court decided not to pass judgement on this because Article 8 was already violated. However, if the breach of Article 8 was found to be unlawful for Section 44 searches, it seems likely that the breach of Article 5 would be the same. Once again, we can expect this to be the same for Section 60 searches, given the similarity of process but distinct difference in ‘potential threat’ to balance the proportionality against.

250 As such, Section 60 searches can clearly be seen to breach Articles 5 and 8 of the ECHR. The rates of these searches also illustrate a breach of Article 14 of the ECHR (and Article 7 of the UDHR). These searches grossly discriminate against Black members of the public, without a corresponding success rate to defend this practice. Recent figures show that Black people were [11 times more likely to be searched under Section 60](#) powers than white people, even though [fewer than 5% of these searches resulted in an arrest](#). This is particularly important as the number of Section 60 searches has risen during 2020. The two most relevant factors seem to either be the coronavirus lockdown or the BLM protests. As the coronavirus lockdown has nothing to do with any ‘incidents involving violence’ we must assume that the police are applying this label to the protests instead. As the protests have been largely peaceful, and rarely involved any offensive weapons (other than the 13th
260 June marches by several far-right groups) this seems very questionable, and the continued racial disproportionality implies further racial discrimination. The combination of policies which are demonstrably racist – by independent statistics and studies – and the refusal to take effective

measures to correct these policies breaches Article 2. 1 (a) and (b) of the International Convention on the Elimination of All Forms of Racial Discrimination 1965.

Suspicion searches

While non-suspicion searches are unlawful by their very nature, suspicion searches are practiced unlawfully and are clearly used discriminately. These searches most commonly come under Section 23 of the Misuse of Drugs Act 1971 or Section 1 of the Police and Criminal Evidence Act 1984.

270 In both cases, the suspicion needs to be based on 'reasonable grounds'. These are intended to be objective – such as fitting the description of a suspect for a crime or clearly hiding something from the police – and cannot be based on personal factors – such as stereotypes. However, in the UK Black people are far more often stopped and searched than white people, and these grounds often are not present. In the case of Section 23 searches, for example, the 'smell of cannabis' is a controversial ground for stopping someone. These stops have been found to be [no more likely to find drugs](#) and are actually [advised against by the College of Policing](#). However, there are myriad reported examples of [this ground being used to stop and search, especially for Black people](#). In addition, rates of drug use are repeatedly found to be similar or [lower for Black communities than white](#), and use of higher Class drugs are especially found to be [higher amongst middle- and upper-class white groups](#). Nevertheless, Black people are significantly more likely to be stopped and searched. This combination of disproportionate search rates without any apparent justification implies significant racial discrimination.

280 This pattern of racial discrimination has been highlighted in numerous regular studies going back decades. It reflects clear accusations of institutional racism from public enquiries and reviews, including [the Stephen Lawrence Inquiry](#), [the Lammy Review](#) (although this report carefully uses the language of "disproportionality"), the [Independent Review of Deaths and Serious Incidents in Police Custody](#) (although this report prefers the term "discrimination"), and even the Scarman Report (although this one only used the language of "unwitting" or "unconscious" racism). However, the government and the police have refused to properly implement most of the recommendations
290 which could fight this institutional racism, and [have even refused to believe it exists](#).

As above, the combination of policies which are demonstrably racist – by independent statistics and studies – and the refusal to take effective measures to correct these policies breaches Article 2. 1 (a) and (b) of the International Convention on the Elimination of All Forms of Racial Discrimination 1965.