

## **The Policing of Children in England and Wales and International**

### **Human Rights Standards**

#### **Submission to Committee on the Rights of the Child from**

#### **StopWatch**

##### Introduction

1. Drawing on research conducted by StopWatch in recent years, this report is submitted to the Committee on the Rights of the Child in relation to the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland. StopWatch highlights concerns with provisions contained in the Police and Criminal Evidence Act 1984 (PACE) and its research provides updated information in regard to some of the issues listed in Part III of the document summarising the concerns of the Convention on the Rights of the Child. More specifically, StopWatch collected data, statistics and other information, in relation to Part III, Section 2:
  - b) The number of incidents where Taser guns, attenuating energy projectiles and rubber or plastic bullets were used against children;
  - c) The number of stop-and-search checks carried out on children.
2. The arbitrary detention of children and the use of force against them risk violating several rights of the United Nations Committee on the Rights of the Child (UNCRC) and Human Rights Act 1998. Amongst others, the right to non-discrimination<sup>1</sup>, privacy<sup>2</sup>, protection against torture<sup>3</sup>, freedom of movement and peaceful assembly<sup>4</sup> and not to be arbitrarily detained<sup>5</sup>. Even if stop and search powers do not contravene international human rights standards, stopping always the 'usual suspects', discriminating BME groups and using force without reasonable circumstances are unlawful under both domestic legislation and international human rights law.
3. StopWatch<sup>6</sup> is a coalition of leading civil society organisations, academics, lawyers, community workers, activists and young people which campaigns for fair and accountable policing, with particular reference to stop and search. StopWatch leads a wide-ranging campaign against the disproportionate use of stop and search, the increasing use of exceptional stop and search powers and the weakening of accountability mechanisms. This includes legal and policy analysis, media coverage and commentary, political advocacy, litigation, submissions to national and international organisations and community organising.

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<sup>1</sup> HRA Article 14, CRC Article 2

<sup>2</sup> HRA Article 8, CRC Article 16

<sup>3</sup> HRA Article 3

<sup>4</sup> HRA Article 11, CRC Article 15

<sup>5</sup> HRA Article 5; CRC Article 37

<sup>6</sup> StopWatch's website: <http://www.stop-watch.org/>

## Key Findings of the report<sup>7</sup>

- In 2013-2014, data provided by 18 forces (out of 43) shows there were 99.402 searches of under 18s that resulted in the arrest of 10.808 children. This 'success' rate is only 11% for minors and is even lower than the overall arrest rate of stop and search.
- In 2015, a total of 8 police forces (out of 43) recorded 75 strip searches of minors.
- From January 2014 to November 2015, the Metropolitan Police Service used Taser guns against 185 minors. Amongst these, 16 times were against children aged 14 years old or younger. Tasers have been fired 10 times, including once against a 13 years old.
- From January 2014 to December 2015, 28 out of 43 police forces in England and Wales (those who provided a response to StopWatch FOI request, excluded the MPS) has used Taser guns against minors more than 407 times, including 57 times against those 14 years old or younger. Tasers have been fired 34 times.

### A. The number of stop-and-search checks carried out on children.

*Rights violated: HRA Articles 8, 11, 14 and CRC Articles 2, 3, 15, 16.*

4. Stop and search refers to a range of police powers<sup>8</sup> to search a member of the public in order to find a prohibited item. The vast majority of searches require reasonable grounds for suspicion that they are carrying that item. Police use of these powers in the United Kingdom (UK) have long been criticised by civil liberties groups and statutory monitoring authorities such as Her Majesty's Inspectorate of Constabulary<sup>9</sup> (HMIC). Their misuse damages the police's relationship with affected communities, especially if targeted disproportionately against people from black or minority ethnic backgrounds (BME), and in doing so they also risk being counterproductive<sup>10</sup>.
5. Freedom of Information (FOI) requests that StopWatch sent to police forces in England and Wales show that in 2013-2014, according to responses provided by 18 forces (out of 43), there were 99.402 searches of under 18s that resulted in the arrest of 10.808 children. The 'success' rate when searching minors is therefore only 11%, this is lower than the overall arrest rate of stop and search in the same year (12%). The low success rate indicates that children are often stopped without valid reasons, violating CRC *Art. 15 and 16 Freedom of association and Right to privacy*. Moreover the All Party Parliamentary Group for Children (APPGC) found that, between 2009 and 2013, 26 police forces in England and Wales carried out more than one million stops and searches were carried out on children<sup>11</sup>. Out of these, 1.136 were conducted on children *under* 10 years old, the age of criminal responsibility. Stops and searches on children under 18 accounted for 13%- 28% of the total number of stops within each force and almost half of the children searched were from BME groups.
6. These experiences have a damaging impact on children; research from the USA has found that being stopped or arrested increased deviant attitudes and negatively influenced future interactions with the

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<sup>7</sup> Data received from Freedom of Information requests made by StopWatch

<sup>8</sup> As outlined in Criminal Justice and Public Order Act 1994, Terrorism Act 2000, Police and Criminal Evidence Act 1984.

<sup>9</sup> HMIC, Stop and search powers 2: are the police using them effectively and fairly? (2015)

<sup>10</sup> Delsol and Shiner, Stop and Search: the Anatomy of a Police Power (2015)

<sup>11</sup> The All Party Parliamentary Group for Children inquiry on children and the police during the 2013-14 and 2014-15 parliamentary sessions [http://www.ncb.org.uk/media/1164355/appgc\\_children\\_and\\_police\\_report\\_-\\_final.pdf](http://www.ncb.org.uk/media/1164355/appgc_children_and_police_report_-_final.pdf)

police<sup>12</sup>. In the United Kingdom, a study interviewing 15 to 17 years old who had been in contact with the youth justice system found almost all of them had been treated unjustly by police officers<sup>13</sup>. The interviewees believed that their age, dress and social background exposed them to unfair and unjustified police attention and the study proposes that the primary function of stop and searching young people is social control rather than crime prevention.

7. This data demonstrates that children, particularly those from BME communities, are being treated as criminals from an extremely young age rather than a vulnerable group in need of 'protection from all forms of violence'<sup>14</sup> violating CRC Art.2 *Right to non-discrimination* and Art.3 *Best interest of the Child*. Police have argued that they often treat young children as victims during stop and search as adults *may* hand them prohibited items to transport in order to prevent detection themselves. It is of note that there is no data available to support this.
8. More broadly, we would like the Committee to recognise that damaged police-community relations undermine police forces' legitimacy and erodes trust, deterring cooperation and fuelling racial tensions. Through StopWatch's educational programme for young people we know this to be particularly true; for many children a negative encounter with the police can have long-lasting and devastating impact. Indeed children's welfare and their vulnerabilities should be the core concern of their interactions with the police.

## B. The number of strip searches carried out on children

*Rights violated: HRA Articles 5, 8, 11 and CRC Articles 15, 16, 37.*

9. There are serious concerns around so called 'strip searches', a specific police practice related to stop and search. This term refers to two distinct types of search:
  - 'More thorough searches', as part of a stop and search, where the officer deems it necessary that the subject removes more than outer coat, jacket or gloves (as outlined in PACE, Code A, 3.6).
  - 'Searches involving exposure of intimate parts of the body' as part of a stop and search (as outlined in PACE, Code A, 3.7), where the person removes all or most of their clothing.
10. Currently, neither PACE nor its Codes impose any recording obligations on the police in relation to 3.6 and 3.7 and therefore such searches, which constitute grave impositions upon a person's autonomy and private life, are not being consistently recorded. This year HMIC stated that the lack of recording of pre-arrest strip search "is a very serious situation as it does not allow for a proportionate and necessary level of scrutiny of these very intrusive searches"<sup>15</sup>.
11. StopWatch asked all police forces in England and Wales to provide the number of people who have been strip searched from January 2015 to November 2015. Out of 43 police forces, only 8 were able to provide us with the data, highlighting the shortcomings of current monitoring mechanisms at a time when the Children's Rights Alliance for England (CRAE) has simultaneously stated that strip searches of children

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<sup>12</sup> Wiley, Slocum and Esbensen, *The Unintended Consequences of Being Stopped or Arrested* (2013)

<sup>13</sup> Flacks, unpublished

<sup>14</sup> Article 19, UN Convention on the Right of the Child (1991)

<sup>15</sup> HMIC, *Stop and search powers 2: are the police using them effectively and fairly?* (2015)

have doubled between 2008 and 2013<sup>16</sup>. According to these FOI responses, the total number of children who have been subject to strip search by less than one fifth of police forces in 2015 was 75<sup>17</sup>. Inconsistencies in the collection and collation of data makes it impossible to fully comprehend both how this power impacts the most vulnerable people and its usefulness in detecting prohibited items. Moreover, in the same report CRAE found that in 2013 no 'appropriate adult' was present in 45% of strip searches of minors. This was also recognised by APPGC in their inquiry, arguing against the overuse of searches and strip searches of children<sup>18</sup>. The misuse of strip search powers violate CRC Art. 15 Freedom of association, Art. 16 Right to privacy and Art. 37 Inhumane treatment and detention.

12. The Committee may also like to note that through StopWatch's engagement with children we have found these experiences be degrading and traumatic for them, causing enormous humiliation, distress and embarrassment - this is significantly compounded in the absence of proper safeguards and accountability.

### C. The number of incidents where Taser guns were used against children

*Rights violated: HRA Articles 3, 11, 5 and CRC Articles 4, 15, 19, 37*

13. Taser guns, a non-lethal weapon that sends an electric shock through its target, is increasingly being used by police to temporarily incapacitate a suspect<sup>19</sup>. The physical consequences that these weapons have on human body have been thoroughly examined only recently with a study asserting that there may be an association between Taser exposure and cognitive impairment<sup>20</sup>. The Defence Scientific Advisory Council to the UK Government has further warned that children and thin adults may also be at greater risk of internal injury to sensitive structures in the head and neck regions due to the closer proximity of these structures to the most commonly used point of aim, the frontal chest<sup>21</sup>. Additionally, Amnesty International has urged that the psychological implications are also considered, substantive work is yet to be done in this area<sup>22</sup>.
14. CRAE revealed that in 2013 Tasers had been used on more than 300 children<sup>23</sup>. According to the results of Freedom of Information requests sent by StopWatch, in 2014 and 2015 the Metropolitan Police Service deployed Tasers 2542 times<sup>24</sup>. Amongst these, 185 were used against children under 18 years old and, more specifically, 16 times against children aged 14 years old or younger. Tasers have been fired 10 times, including once against a 13 years old. StopWatch has also asked all police forces in England and Wales to provide data on the use of Taser guns against children. The results show that from January 2014

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<sup>16</sup> CRAE, State of Children's Rights in England (2014)

<sup>17</sup> Of these 8 responses, 4 forces started recording this type of search only in 2015 (with different months as a start date). These 8 forces vary significantly in terms of population size and therefore, coupled with inconsistency in data collection, makes it difficult to infer use of strip search on a national level.

<sup>18</sup> APPGC (2014) see n.9 above

<sup>19</sup> The use of Tasers has been rolled out across England and Wales in 2008 to specially trained units, without being limited to specialist firearms officers, as it was during its initial 12-months trial.

<sup>20</sup> M. White, Ready J., Kane R., Dario L., Examining the effects of Taser on cognitive functioning (2014)

<sup>21</sup> DOMILL, Statement on the medical Implications of Use of the Taser X26 and M26 Less-lethal Systems on Children and Vulnerable Adults (2011).

<sup>22</sup> McCarthy, Taser use against children by police in Wales doubles in the space of a year (2015). Available at: <http://www.walesonline.co.uk/news/wales-news/taser-use-against-children-police-9770804> Accessed on 14 April 2016

<sup>23</sup> CRAE (2014) see n.15 above

<sup>24</sup> The use of Tasers is recorded against seven categories: drawn, aimed, arced, red-dot, drive stun, angle-drive stun and fired. The term 'deployment' or 'used' include all of these categories.

to December 2015, 28 out of 43 police forces (the remaining forces that provided a response to the FOI request, excluded the MPS) have deployed Taser guns against minors more than 407 times, including 57 times against 14 years old or younger. Amongst these deployments, Tasers have been fired 34 times.

15. In 2007 the UN Committee against Torture decided that Tasers cause pain severe enough for them to be considered a form of torture. Additionally, Article 19 of UN Convention on the Rights of the Child (1989) states: "Governments must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and bad treatment by their parents or anyone else who looks after them". The United Nations' position on Tasers together with FOI data demonstrates the use of such 'less-lethal' weapons on children violates several rights under the Convention on the Rights of the Child, i.e. *Art. 15 Freedom of association, Art. 19 Protection from all forms of violence, Art. 37 Detention and punishment, Art. 4 Protection of rights.*
16. In spite of this, pressure to increase their use is high with recent recommendations that all front-line police in England and Wales should be offered these weapons<sup>25</sup>. A rise in the availability and use of Tasers deprioritises the use of traditional, less tortuous alternatives for defusing conflict. The use of these 'less-lethal weapons' against children signifies a further shift towards a violent and aggressive style of policing. Whilst there are legitimate concerns that the use of Tasers would change the face of British policing and its concept of "policing by consent" we are particularly concerned about the physical and psychological effects that these weapons have on children.

#### D. Implications

17. The revised PACE Code A now includes the following safeguard in relation to children:

The Children Act 2004, section 11, also requires chief police officers and other specified persons and bodies to ensure that in the discharge of their functions they have regard to the need to safeguard and promote the welfare of all persons under the age of 18 (Section 1.1) (Home Office, 2015).

This merely references an existing legal requirement and creates no additional duty. The recognition of children in PACE is welcome, however the obligation above is confusingly mentioned in the context of children under the age of criminal responsibility who have been found in circumstances which suggest that their welfare and safety may be at risk. There is no reference in PACE to the risk of harm caused to children by the stop and search process itself, or any specific safeguarding responsibilities towards *all* children as a vulnerable group in themselves.

18. As the issues raised engage CRC Articles 2, 3, 4, 15, 16 19, 37 we would like to impress upon the Committee the critical importance of using police powers against children only when absolutely necessary and only when safeguards are in place in order to ensure children's safety, physically and psychologically. Current legislation is insufficient to defend children's rights and hold police accountable.

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<sup>25</sup> Dodd, V. Police Federation votes for Tasers for uniformed officers (2015) Available at: <http://www.theguardian.com/world/2015/feb/09/police-federation-votes-tasers-uniformed-officers> accessed 14th April 2016

## Recommendations

### **A. The number of stop-and-search checks carried out on children. In relation to its recommendations, we urge CRC to ask the UK to:**

- Publicly acknowledge the particular problems that stop and search inflicts on children as a distinct vulnerable group and commit to reducing the number of children searched in England and Wales.
- Recommend that an independent observer or an adult of choice be required to monitor searches of children aged 14 years old or younger.
- Require police officers with body worn cameras to record all searches on children.
- Ensure police officers meet a higher standard of reasonable grounds to stop and search children aged 14 years old or younger.
- Introduce additional recording requirements for stops and searches on children demonstrating that human rights standards of proportionality and necessity are met.
- Ensure that children under 10 years old are searched only in exceptional circumstances and when authorised by an inspector.
- Require officers to report searches on minors to their child protection officers, who would then be required to make a determination as to whether the child is at risk and, if so, referred to the correct agency for a response.
- Ensure police officers record age. If not given, they should estimate so that data can be monitored.

### **B. The number of strip searches carried out on children. In relation to its recommendations, we urge CRC to ask the UK to:**

- Ensure that the use of strip search powers on children aged 14 years old or younger happens only when absolutely necessary and authorised by an inspector.
- Amend Code A 3.6 and 3.6 of PACE to ensure strip search powers are used only where an arrest threshold has been met and an arrest has been made<sup>26</sup>.
- Conduct an independent review into the use of PACE, Code A 3.6 and 3.7 giving particular attention to the use of these powers against children and vulnerable people.
- Require police forces to consistently record the use of PACE, Code A 3.6 and 3.7 and to make the data open to public scrutiny.

### **C. The number of incidents where Taser guns were used against children. In relation to its recommendations, we urge CRC to ask the UK to:**

- Publicly acknowledge the dangers and impact of using Taser guns against children and commit to reducing their use, in particular to eliminate disproportionate use against ethnic minority communities.
- Publish specific guidance on the use of Tasers against children.
- Prohibit the firing of Tasers on children aged 14 years old or younger.

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<sup>26</sup> Interviews that HMIC conducted with police officers themselves shows that some believe that it would be preferable to conduct a search only after an arrest, using post-arrest powers in custody where additional safeguards apply, along with supervision of officers.