Release's response to call for input to gather information in advance of the Working Group of Experts on People of African Descent (WGEPAD) country visit to the United Kingdom of Great Britain and Northern Ireland 18-27 January 2023

Release is the national centre of expertise on drugs and drugs law in the UK. The organisation, founded in 1967, is an independent and registered charity. Release is a NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

Release is pleased to share this submission with the UN Working Group of Experts on People of African Descent (WGEPAD) to assist in their examination of racism and discrimination faced by people of African descent in the UK. This submission focuses on how the enforcement of drug laws drive and sustain racial disparity in the UK. Policing practices such as stop and search disproportionately affect the Black community and other ethnic minorities. Moreover, there is an overrepresentation of Black people and ethnic minorities in the criminal justice system. Finally, the submission looks at how punitive drug policies affect all strata of the Black community, including children. Here, we will explore how Black children are disproportionately subjected to strip-searches, which are typically conducted under the racist assumption that Black children are more likely to possess drugs. The case of child Q, outlined below, is emblematic of the 'adultification' of Black children and how carceral approaches to drug policies infringes the human rights of vulnerable populations, such as young school children.

1. Racial bias and discrimination in the criminal justice system and law enforcement

1.1 Disproportionate use of stop and search

Racial disparities within the criminal justice system, and how this has led to significant distrust in the police for those from Black communities, is well documented. The Mcpherson report (1999) following the death of Stephen Lawrence established that the Metropolitan Police are, in fact, institutionally racist[1]. Nowhere is this fact more evident than the practice of stop and search.

From 2017, we found a yearly increase of 45% in the number of stop-searches conducted by police forces across England and Wales[2]. What's particularly worrying is that the proportion of searches initiated due to the suspicion of drugs increased over this period, from 40% of all searches in 2009/10 to 63% in 2019/20[3]. In fact, in the past decade more than half of all stop and searches conducted each year by police in England and Wales were on the grounds of suspicion of drug possession[4].

[1] MacPherson, W, (1999). The Stephen Lawrence Inquiry. Available: 4262.pdf (publishing.service.gov.uk)
[2] Allen & Tunnicliffe, (2021). Drug Crime: Statistics for England and Wales. Available: Drug crime: Statistics for England and Wales - House of Commons Library (parliament.uk)
[3] Ibid.
[4] Ibid.

Interestingly, the largest percentage increase in any year was between March 2020 and March 2021, when the number of searches for drugs by 36% from 350,904 to 478,576[5].

During April 2020 to March 2021, there were 7.5 stop and searches for every 1,000 white people, compared with 52.6 for every 1,000 Black people[6], meaning Black people were seven times more likely to be subject to this police power. This occurred during the COVID-19 pandemic, when despite lockdown measures severely restricting the general public's access to public spaces, the Black population still faced disproportionate contact with the police. Police data published by the UK Home Office shows males aged 15-34 from a "BAME" background account for 32% of all stop and searches in the year ending March 2021, despite only comprising 2.6% of the population[7].

Crucially, the main reason behind officers stopping someone was to search for drugs, accounting for 69% of all searches, with the overall number of drug stops rising by 36% in a year[8]. The figures paint a clear picture: Black people and those from ethnic minority communities are disproportionately impacted by this police power. We know from inspections undertaken by the police watchdog these searches are largely for possession of drugs, and usually cannabis[9], begging the question why were police proactively targeting people in the middle of lockdowns, searching people contrary to public health guidance and disproportionately focusing efforts in areas of high deprivation. Especially, given that these areas were facing some of the worst aspects of Covid19, with higher rates of infections, hospitalisations, and deaths.

This racial disparity is compounded by the fact that the 'find' rate for drugs is lower for Black people than white people. In fact, drug searches are less likely to yield the suspected item for Black suspects than white suspects and those from other ethnic groups. Looking at the figures closely, we see that with searches specifically based on the "smell of cannabis", only 29% of such searches conducted on Black people did police actually find anything, whereas with their white counterparts, it was much higher at 37%[10]. The disparity in find rates is concerning because 'it suggests that the use of stop and search on Black people might be based on weaker grounds for suspicion than its use on white people, particularly in respect of drugs'[11]. Once again, highlighting a bias within police forces which hold Black people to a lower threshold of suspicion for drug use and possession. The over-policing of Black communities is evident across the board, with every police force in England and Wales having stopped and searched Black people at a higher rate than white people[12]. This trend is well evidenced for all

[5] Ibid.
[6] Home Office, (2022). Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2022. Available: Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2022 - GOV.UK (www.gov.uk)
[7] Ibid.
[8] Ibid.
[9] HMIC, (2013). Stop and Search Powers: Are the police using them effectively and fairly? Available: https://www.justiceinspectorates.gov.uk/hmicfrs/media/stop-and-search-powers-20130709.pdf
[10] Shiner et al., The colour of injustice: Race, drugs and law enforcement in England and Wales. Available: https://www.release.org.uk/publications/ColourOfInjustice
[11] Ibid.
[12] Ibid.

suspected offences as well as drug offences[13]. Added to this is the fact that government statistics repeatedly show is that Black people use drugs at the similar, or in some cases lower, rates than white people.[14]

Racial injustice pervaded by stop and search is acknowledged by some officials. In 2021, Her Majesty's Inspectorate of Constabulary, Fire and Rescue Services stated that 'over 35 years on from the introduction of stop and search legislation, no [police] force fully understands the impact of the use of these powers'[15]. Furthermore, the report acknowledges the disproportionate use against racialised communities and condemns the use of stop and search in relation to drug offences, and the deliberate focus on possession rather than supply, as an 'ineffective crime control measure'. It goes on to explain that the subsequent effect of basing stop and searches on suspicion over hard intelligence is that it damages public trust and weakens police legitimacy[16].

1.2 Sentencing

Data shows that despite stop and searches falling from 1.2 million in 2009/2010 to approximately 303,288 in 2016/2017, the arrest rate for Black people remained the same, whereas for white people it halved[17]. This exemplifies the disproportionate criminalisation of the Black community with Black defendants more likely to be arrested and more likely to face harsher sentencing. Analysis demonstrates that minority ethnic offenders sentenced for drug offences in the Crown Court had considerably higher odds of receiving an immediate custodial sentence than their white counterparts[18]. Stop and search provides an important gateway into the criminal justice system for drug offences, accounting for 39% of all arrests for drugs compared with 3% of arrests for other offences[19]. Furthermore, the fact that Black people are more likely to be arrested as a result of a stop and search than white people, demonstrates that not only are Black communities over-policed but they are also disproportionately criminalised. Around one-fifth of all arrests of Black people result from stop and search, this is more than three times the rate of their white counterparts. Looking at drug offences specifically, about 57% of arrests of Black people resulted from stop and search, in comparison to only 31% of arrests for white people[20]. These disparities suggest that the

[13] Ibid.
[14] Ibid.
[15] HM Inspectorate of Constabulary and Fire & Rescue Services, (2021). Disproportionate use of police powers: A spotlight on stop and search and the use of force. Available: Disproportionate use of police powers – A spotlight on stop and search and the use of force - HMICFRS (justiceinspectorates.gov.uk)
[16] Ibid.
[17] Shiner et al., The colour of injustice: Race, drugs and law enforcement in England and Wales. Available: https://www.release.org.uk/publications/ColourOfInjustice
[18] David Lammy, (2017). The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System. Available: https://www.gov.uk/government/publications/lammy-review-final-report
[19] Home Office, (2022). Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2022. Available: Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2022 - GOV.UK (www.gov.uk
[20] Shiner et al., The colour of injustice: Race, drugs and law enforcement in England and Wales. Available: https://www.release.org.uk/publications/ColourOfInjustice

disproportionate application of stop and search is largely a function of police policy and decision-making rather than crime.

Moreover, the racialised nature of drug law enforcement, and in particular the sentencing of drug offences and the ethnic disparities behind these figures, have a direct link with social mobility, particularly that of the Black community[21]. Racial disparities in the sentencing of offences has been well documented, figures from Release's report show Black people were prosecuted for drug offences at more than eight times the rate of white people[22]. Furthermore, the criminalisation of people who use cannabis has been a particular driver in entrenching Black people deeper into the criminal justice system, with cannabis possession often becoming an entry point into the criminal justice system for many and disproportionately so for young, Black men. For example, Black and Asian people were convicted of cannabis possession at 11.8 and 2.4 times the rate white people despite their lower rates of self-reported use, providing prima facie evidence of discrimination[23]. This is further evidenced by the fact that in spite of comprising only around 4% of the general population, Black people make up a quarter of all those convicted for cannabis possession cases. Astonishingly, more Black people are prosecuted and convicted for cannabis possession than for the supply of Class A and B drugs combined. Punitive drug law enforcement is clearly a form of racial and social control, and is a tool of oppression. The overrepresentation of Black people charged with cannabis possession offences is a clear example of a punitive and racially-biased policy.

The decriminalisation of drugs, that is the removal of criminal sanctions for possession and other personal use offences, is evidently the most pragmatic approach to reducing the negative racial impact of current criminal justice interventions, such as stop and search. It is imperative to recognise drug use as a public health issue and to implement policies that ameliorate the racial disparity sustained by the current approach of criminalisation. Over 30 countries have decriminalised possession of drugs none of experienced an increase in drug use linked to the change in the legal framework[24]. Release found that in the past 15 years, over half a million people were convicted for possession, 50 per cent of which were criminalised for cannabis possession specifically[25]. Research by colleagues at Transform, estimate that over 3 million people have been criminalised in the UK for possession of drugs since the inception of the Misuse of Drugs Act 1971.[26]

This highlights just how crucial drug policy reform and moving away from the punitive criminalisation of drugs is interlinked with reducing racial disparities in the criminal justice system. The benefits of decriminalisation are well-founded and beyond decriminalisation, regulatory models for cannabis in the US are being introduced in some states as a way of repairing some of the damage of prohibition. Measures such as the expungement of criminal records are a feature of many state models, addressing

[21] Ibid.
[22] Ibid.
[23] Ibid.
[24] Eastwood et al., (2016), A quiet revolution: Decriminalisation across the globe. Available: https://www.release.org.uk/publications/drug-decriminalisation-2016
[25] Ibid.
[26] Transform: Drug Policy Foundation, (2022). Counting the cost of UK drug policy. Available: https://transformdrugs.org/blog/misuse-of-drugs-act-counting-the-costs

some of the harm caused by punitive drug policies, this is vital, especially if countries want to repair the negative impact drug policies have had on Black communities. Drug law reform, in particular the legalisation of cannabis, has been proven to substantially reduce racial arrest disparities[27].

2. Racial bias in the policing of young people, especially in educational settings – the use of strip search

2.1 The over-policing of Black children: child strip-searches - the case of child Q

Racial bias can disproportionately affect children of Black and African descent. Recently, the children's commissioner for England found that around 650 children were strip-searched by the police over a two-year period, with the majority to be found "innocent of the suspicions against them"[28]. Worryingly, the data showed that in a quarter of the cases (around 23%), it was found that there was no presence of an appropriate adult (this is either a parent, legal guardian, or social worker) during the search, in spite of the statutory requirement to do so[29]. The investigation was triggered by the case of child Q, a 15-year-old schoolgirl was strip-searched by Metropolitan police officers in 2020 due to being falsely suspected of being in possession of cannabis whilst at school after staff reported her to the police. Later, it emerged that the child was not only searched in the absence of an appropriate adult but also the search was conducted despite the knowledge that she was menstruating. Moreover, the school neglected to inform the child 's parents of the strip-search until after the matter[30].

This worrying phenomenon exemplifies one of the many harms produced by a punitive-focused drug policy strategy. Once again, we find the Black community, in this case Black children, facing the brunt of carceral drug policies. Failing to implement meaningful measures will only perpetuate trauma onto more children. According to the mother of child Q, the girl was left so traumatised after being strip-searched that she felt suicidal. Nonetheless, Met's deputy assistant commissioner Lawrence Taylor defended the force's actions. He explained that "it is absolutely right that police focus where that harm exists – we're not targeting people, we are focusing on our intelligence-led policing"[31]. Yet the data reflects otherwise. Here, we find that over the past three years, two-thirds of children who had been strip searched by the Met were from racialised backgrounds. Moreover, out of the 78 girls who were strip-searched in London police stations last year- 32 of them were black/mixed race[32].

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[27] Sheehan et al., (2021). Association of Racial Disparity of Cannabis Possession Arrests Among Adults and Youths with Statewide Cannabis Decriminalization and Legalization. Available: https://jamanetwork.com/journals/jama-health-forum/fullarticle/2785582

[28] Weale, (2022). Revealed: Met police strip-searched 650 children in two-year period. Available: https://www.theguardian.com/uk-news/2022/aug/08/police-data-raises-alarm-over-welfare-of-strip-searched-children

[29] Ibid.

[30] Ibid.

[31] Holloway, (2022). Child Q: Strip-searches are a violation of human rights. Available: https://www.voice-online.co.uk/news/uk-news/2022/03/16/child-q-strip-searches-are-becoming-common-practice-against-black-kids/

[32] Mahalingam, (2022). Around 50 children strip searched by the police every week – and most are black. Available: https://www.thejusticegap.com/around-50-children-strip-searched-by-the-police-every-week-and-most-are-black/

Release argues that strip-searching children infringes the dignity of the child and is a brutal and traumatic act. It is unacceptable that in the past five years, the Metropolitan Police strip searched an average of five children every day[33]. Moreover, the fact that searches were also imposed against children under the age of 12 is simply unjustifiable[34]. Once again, racial bias and discrimination take place with Black children being strip searched more often than any other ethnic group. Plus, the reinforcement of racist stereotypes prevails as strip searches performed against children are usually justified with excuses such as 'smelling cannabis'. This was the case with child Q, where teachers falsely believed she was in possession of drugs because she smelt of cannabis. The occurrence of strip-searching children, particularly that of Black children, clearly demonstrates how Black people face over-criminalisation and bear the brunt of institutional racism right from the beginning even as children.

Strip search is also used against adults in the UK, and as with children is disproportionately targeted at Black and other ethnic minority communities. Release is currently analysing data relating to the use of strip search which we would be happy to share with the working group.

In addition to the policing of children in schools, school exclusions – often for drugs – is another form of discrimination and harm that is experienced by Black children. Analysis of permanent and fixed exclusions in England demonstrates that exclusion disproportionately impacts students from certain ethnicity groups.[35] The government-commissioned 'Timpson Review' shows that after controlling for other factors, Black Caribbean children are around 1.7 times more likely to be permanently excluded compared to White British children, while Mixed White and Black Caribbean children are around 1.6 times more likely, and Indian and Bangladeshi pupils are around half as likely.[36] Equally, children in some ethnic groups do not appear to be permanently excluded at a different rate from White British pupils, such as Black African children.

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[33] De Souza, (2022). Strip search of children by the Metropolitan Police Service - new analysis by the children's Commissioner for England. Available: https://www.childrenscommissioner.gov.uk/report/strip-search-of-children-by-the-metropolitan-police-service-new-analysis-by-the-childrens-commissioner-for-england/

[34] endstripsearch.co.uk

[35] ONS (2020) Permanent and fixed-period exclusions in England: 2018 to 2019. Available: https://www.gov.uk/government/statistics/permanent-and-fixedperiod-exclusions-in-england-2018-to-2019

[36] Timpson, E. (2019). Timpson Review of School Exclusions. Available: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807862/Timpson_review.pdf, p.34