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CHAPTER 4 | Stop and Search procedures and Arrest

STOP AND SEARCH

This is resource note 4.1 of the CTI practical Police Resource Toolkit for professional, human rights-compliant Policing.

BACKGROUND

1. 'Stop and search' refers to the practice of police and other authorised officials stopping individuals in public places, with the view to inspecting the person, objects in their possession or their vehicle. Stop and search do not always happen in sequence, however as stop followed by search entails particular human rights risk, they are treated in this resource note as one concept. As the person concerned cannot leave the scene during this procedure, stop and search constitutes a form of deprivation of liberty. Other forms of deprivation of liberty considered in this practical resource toolkit include 'arrest', 'police custody' and 'transport'. Stop and search should be limited to preventing or detecting crimes and requires a reasonable suspicion that such a crime has been committed.

2. As stop and search is not associated with the safeguards that apply to an arrest or a search with a warrant, specific precautions are needed to ensure it does not breach an individual's rights to freedom of movement, non-discrimination, liberty or privacy. Furthermore, it is important that the use of the practice respects due process rights and contributes to – rather than undermines – the fairness of any criminal proceeding. In order to ensure that a stop and search is justifiable in any particular case, and not arbitrary, it is important that law enforcement officials only exercise this power when it is legal, strictly necessary and proportionate.

3. Many countries have sought to regulate stop and search by introducing specific legislation or rules and/or adopting codes of practice and guidance. These tend to identify the criteria to determine when a stop and search is appropriate and explain how a stop and search is to be carried out. Some countries have limited the circumstances in which stop-and-search powers may be exercised by introducing temporal, geographic and/ or subject-matter restrictions. A number of countries have expanded stop-and-search powers in the wake of public concern about specific types of crime, for example, carrying dangerous weapons (such as knives) or illicit drugs. Stop-and-search powers have also been granted to various authorities in the context of health emergencies to enforce policies to prevent the spread of communicable diseases, such as COVID-19.

4. Studies have shown that ethnic, racial or religious minority groups and other marginalised or disadvantaged persons can be disproportionately targeted by stop and search. This can have a corrosive impact on relations between law enforcement and the affected communities, making those targeted less willing to cooperate with law enforcement and potentially limiting the effectiveness of police work in those communities. It is contrary to international law for stop-and-search powers to be used in ways that discriminate against particular communities or individuals, and some States have taken measures to promote equality and non-discrimination in all law enforcement work. This involves measures such as human resources policies to ensure the representation of all communities and diversity in the police force itself, and training and awareness-raising

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about the unacceptability of discrimination and the risks of stereotyping and racial profiling,[1] as well as of conscious and unconscious bias. Furthermore, the introduction of data-capture processes such as body-worn cameras to record stops and searches in some countries has served as a deterrent against abuse of power and appears helpful for both monitoring purposes and follow-up of any potential complaints, while complying with regulations on the protection of personal data.

SAFEGUARDS, PROCEDURES AND RECOMMENDED PRACTICES

This non-exhaustive list of safeguards is considered helpful to improve the efficacy of stop and search, to better regulate these practices, and to protect against arbitrary and unlawful stop-and-search practices.

5. **Legal basis:** The practice of stop and search has to be based on and in accordance with law which indicates with sufficient clarity and precision the scope and duration of the power, the appropriate procedures and the competent authorities. It is recommended that law enforcement agencies develop detailed guidelines with precise standards for stop-and-search practices, in consultation with relevant groups, in order to prevent racial profiling and ensure that internal policies, including standard operating procedures and codes of conduct, are in line with human rights obligations and standards.

6. **Reasonable grounds:** Officers are required to have reasonable grounds to suspect, based on specific, objective, timely and reliable information, that the person to be stopped and searched has committed or may be committing a crime, or has in their possession illegal goods or substances. In this respect, it has been recognised that *reasonable grounds* should be based on sound information, rather than on the individual's personal or social characteristics, such as ethnicity, age or physical appearance. [2] (For more on the requirement of *reasonable suspicion* or *reasonable grounds* for arrests, see resource note on 'arrest').

7. **Right to information:** Officers have to identify themselves (name and ID number) and explain to the person being stopped and searched the reason and the legal basis for the measure. Distributing brochures setting out a person's rights is considered a good practice and could help to de-escalate tensions.

8. **Respectful conduct:** At all times, the officer shall treat the person stopped and searched with fairness, dignity, courtesy and respect. This includes cultural sensitivity and taking into consideration the age, gender and mental state of the person stopped and searched.

9. **Special regulations and training for frisking/pat-down body searches of women, children and LGBTIQ+ persons:** Pat-down body searches of women and girls, as well as members of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community, during stop-and-search procedures have to be performed in a gender-sensitive manner, including the requirement they be performed by a female officer or an officer of the gender preferred by the individual. The impact of searches on women is aggravated by the context of

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[1] There is no universal definition of racial profiling in international human rights law. However, as this is a persistent phenomenon in all regions of the world, different international and regional human rights bodies and institutions have adopted definitions of racial profiling which have the following common elements: a) it is carried out by law enforcement authorities; b) it is not motivated by objective criteria or reasonable justification; c) it is based on grounds of race, colour, descent, national or ethnic origin or relevant intersecting grounds such as religion, sex or gender, sexual orientation and gender identity, disability and age, migration status, work or other status; and d) it is used in specific contexts, such as immigration control, criminal activity, anti-terrorism or other activity which allegedly violates or may result in the violation of the law (CERD, GC No. 36 on Preventing and Combating Racial Profiling by Law Enforcement Officials, 24 November 2020.

[2] Although national definitions of 'reasonable grounds' may vary, a stop and search is generally considered lawful through evaluating the evidence/information at hand, and there is reason to believe that it is more likely than not that the suspect has committed the crime. A good test of whether there are reasonable grounds to suspect is whether an independent person would come to the same conclusion if they looked objectively at all the facts.

male-dominated power relations and socialised ideas about the female body, as well as the greater likelihood of previous experience of sexual or gender-based violence as a woman, with the search more likely to trigger previous trauma. This is also particularly relevant for LGBTI persons. In exceptional cases, where police believe that it is strictly necessary that a child (any person under the age of 18) be subjected to a stop and search in the absence of a parent/guardian, the information on the procedures should be provided in a way that the child understands.

10. **Special regulations and training on stop and searches of persons with mental health conditions or physical disabilities:** Training on stop-and-search procedures should include clear guidance on how to deal with and protect persons with mental health conditions or physical disabilities during stop-and-search procedures. (For more information on specific safeguards for persons with mental health conditions or physical disabilities, see also resource note on 'arrest').

11. **Recording of information:** Using data-capture processes, including pen and paper, mobile phones, hand-held devices, laptop computers, dispatch radios and/or body-worn cameras, to record information about stop-and-search practices will aid transparency and accountability. Routine data capture is important for the deterrence of overuse or misuse of the practice and to maintain case records of stops or searches, in order to assist with the follow-up of criminal cases and potential complaints. States should refrain, however, from automated processing of personal data and pay due regard to privacy issues. Data that identifies the person who has been stopped and searched should be marked 'classified' to preserve anonymity and privacy rights, and any personal data should be stored in accordance with data-protection legislation. Once the timeframe for lodging complaints about stop and search expires, any personal data from a stop and search which does not form part of an ongoing criminal investigation file should be destroyed.

12. **Disaggregated data:** Collecting disaggregated quantitative and qualitative data on stop-and-search practices is also helpful for carrying out statistical analysis and monitoring, in order to assess trends across different communities and police units. The anonymised statistics generated by such practices should be made available to the public, and the possibility of dialogue with local communities provided. Data collected should always be conducted in accordance with human rights standards and principles, such as data-protection regulations and privacy guarantees.

13. **Receipt:** A good practice is to issue any person subjected to a stop and search with a 'receipt' indicating the date, time, reason and outcome of the procedure, as well as the details of the officer that conducted the procedure (name, ID number and station).

14. **Complaint mechanism:** Persons stopped and searched who are dissatisfied with the way they have been treated should have access to effective complaints mechanisms which promptly and impartially consider their complaint. Complaint mechanisms and procedures must be accessible to all persons, including members of groups that may be more vulnerable. Child-friendly complaint mechanisms and procedures should also be made available. It is recommended that an independent body be designated or established that can handle particularly serious complaints, or those which are not resolved to the satisfaction of the complainant.

15. **Independent investigation procedures and oversight mechanisms:** Effective and independent monitoring mechanisms, both internal and external, are key safeguards against misconduct. It is considered good practice to conduct periodic audits, with the help of independent experts, to identify gaps in internal policies and practices. (For more information, see the resource note on 'independent investigation procedures and oversight mechanisms').

16. **Training:** Police forces and training institutions should include training in the use of stop-and -search powers, including how to identify and avoid unconscious bias, the impact of biases on their work, how to ensure

non-discriminatory conduct, techniques to de-escalate situations in case of refusal to comply, and standard operating procedures applicable to a range of possible scenarios.

17. **Outreach:** Grassroots community outreach and involvement is recommended, in order to gain the trust and respect of local communities. Dedicated and sensitive outreach efforts regarding women, youth and minority groups are considered good practice. This will help ensure that any problems associated with stop-and-search procedures are appropriately notified by the community to the police and that there is a forum in which problems can be discussed and resolved.

18. **Diversity in recruitment:** The recruitment, retention and advancement strategies for law enforcement agencies should promote a diverse workforce, including officers from diverse gender, ethnic and other backgrounds, so as to be more representative of the populations they serve and to promote a culture of diversity and non-discrimination within law enforcement agencies. This may be particularly relevant in the context of stop-and-search procedures and help to de-escalate the use and improve acceptance of the measure. (For more information, see also the resource note on 'recruitment procedures').

COUNTRY EXAMPLES

The Netherlands: Revised guidelines to prevent discrimination in stop and search

On the basis of the Police Act 2012, revised guidelines for police related to avoiding discrimination during 'control' (stop-and-search) activities were issued to the Dutch national police. These specify how to identify suspects and cars when carrying out stop and search, using guidelines provided by the European Commission against Racism and Intolerance in its general policy recommendation No. 11 (2007) on combating racism and racial discrimination in policing, which defines racial profiling as "The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities". Police officers are obligated to explain the reasons for every stop and search of any person in terms of the individual's behaviour, using objective criteria, while disregarding personal characteristics such as ethnicity or skin colour. As a consequence, it is expressly prohibited to select suspect persons solely or predominantly on the grounds of skin colour, descent and/or religion.

South Africa: Community forums to build trust and penalties for unlawful search

The South African Constitution robustly protects against interference with the right to privacy, as well as the rights to dignity, freedom and security of the person, as well as against torture and other ill-treatment. Like in other countries, the Criminal Procedure Act provides for searches without a warrant of "person, container or premises", where the person consents or where a search is "reasonably necessary" for one of the listed purposes in the Act. Under the South African Police Service Act (SAPS Act), warrantless searches can be conducted for the purposes of restoring public order and ensuring safety in a particular area, preventing illegal cross-border movement of people or goods, and at roadblocks and checkpoints set up on public roads or public places. To reinforce proper police conduct, the Criminal Procedure Act establishes an offence for carrying out a search in contravention of the law, with a penalty on conviction of a fine of up to R600 (USD 35) or a term of imprisonment not exceeding six months.

To build community trust in and partnership with the police service, community police forums and boards have been established in South Africa to increase civilian input to various aspects of policing at the

community level and to track the police service, including complaints. The role and functioning of these forums are set out in Chapter 7 of the SAPS Act, 1995, and the associated 2001 Interim Regulations for Community Police Forums and Boards.

The United Kingdom: Additional monitoring and evaluation mechanisms for stop and search

The Police and Criminal Evidence Act 1984 regulates police powers, including stop-and-search powers in England and Wales. In 2004, amid allegations of the disproportionate use of such powers against ethnic minorities, the Home Office launched a Stop and Search Action Team (SSAT), answerable to key government ministers and overseen by a panel of community members, to ensure the police use stop-and-search powers fairly, so as to increase trust between people from ethnic minorities and the police. In 2005, the SSAT produced a stop-and-search manual setting out expectations for police officers. Also, the Mayor's Office for Policing and Crime (MOPAC) supports a network of volunteer Community Monitoring Groups in each of London's Boroughs that monitor police use of stop-and-search powers, including the number of stops, arrest rates, disproportionality, complaints and body-worn video, and provide an opportunity for the local community to engage and discuss the use, outcome and impact of police stop and search. Best practice can be shared with other Community Monitoring Groups and through the London Community Monitoring Network (CMN), which is facilitated by MOPAC. Beyond this, the Independent Office for Police Conduct (IOPC) has power to investigate serious complaints and allegations of misconduct and can make policy recommendations. In October 2020, the IOPC completed investigations of the stop and search by Metropolitan Police Service (MPS) officers and issued 11 practical recommendations to improve the exercise of stop-and-search powers, including the recommendation to ensure that assumptions, stereotypes and bias (conscious or unconscious) are not informing or affecting their officer's decision making on stop and search.[3] All recommendations were accepted.

Spain: Reform projects on the use of stop-and-search powers by five police agencies

Five police agencies in Spain, in partnership with civil society and police partners, implemented a series of reforms between 2007 and 2013 aimed at reducing ethnic profiling and improving police effectiveness. The projects focused on the use of stop-and-search powers. The reform model pioneered through those projects involved implementing clear policies governing the criteria for officers to stop (and potentially search) members of the public, as well as training police officers on these new policies. Police officers completed a form each time they conducted a stop, recording information such as the officer's reason for conducting the stop, the ethnic or national origin of the person stopped, and the stop outcome. As a way to increase community engagement and accountability, a copy of the form was given to the person stopped. The information on the form was later entered into a police database. This provided another layer of accountability and allowed police supervisors and managers to use the data to identify potential biases and inefficiencies, thereby enabling them to redirect officers to make stops that are less discriminatory and more effective. Results of the data analysis were also shared with members of the community. These measures were carried out in the context of a dialogue between police agencies and the community about stop policy and practice, which also helped to increase police effectiveness. The results suggest positive effects of the reforms implemented.[4]

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[3]   Independent Office for Police Conduct (IOPC), Review identifies eleven opportunities for the Met to improve on stop and search, 28 October 2020.

[4]   For a detailed analysis of the measures taken and results of the reform see Fair and Effective Police Stops Lessons in Reform from Five Spanish Police Agencies – Technical Report (2015), Open Society Justice Initiative and Plataforma por la Gestion Policial de la Diversidad.

KEY RESOURCES: STANDARDS AND GUIDELINES

International standards and recommendations:

- Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979

- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

- Committee on the Elimination of Racial Discrimination, General recommendation No. 36, Preventing and Combating Racial Profiling by Law Enforcement Officials, 24 November 2020

Regional standards and recommendations:

- Inter-American standards on Racial Profiling, June 2019

- European Union Agency for Fundamental Rights (FRA), Your rights matter: Police stops, Fundamental Rights Survey, Luxembourg, Publications Office, 2021

- Organization for Security and Co-operation in Europe (OSCE), High Commissioner on National Minorities, Recommendations on Policing in Multi-Ethnic Societies, February 2006

KEY RESOURCES: PRACTICAL TOOLS AND MANUALS

- UNODC/OHCHR Resource book on use of force and firearms, Criminal Justice Handbook Series, 2017, Chapter 9: Stop and search, arrest and detention, page 135

- Open Society Justice Initiative and Plataforma de la Gestión de la Diversidad, Toolkit for the Analysis of Police Identifications: A practical guide to the analysis of police stop data, May 2020

- EU Fundamental Rights Agency, Towards More Effective Policing Understanding and Preventing Discriminatory Ethnic Profiling: A Guide, October 2010

- UNODC, Handbook on police accountability, oversight and integrity, Criminal Justice Handbook Series, 2011

> For more international and regional guidance, resources and practical tools, visit our **RESOURCE PAGE**. This page is updated on a regular basis and includes the most recent standards, guidelines, tools and manuals.

Police and other law enforcement actors in all societies play an incredibly important role so that ordinary citizens can go about their daily lives without fear. Professionalism and integrity are fundamental for them to be able to perform their functions safely and effectively. Police and other law enforcement officials contribute to building a fairer administration of justice by maintaining law and order, preventing and responding to crime and keeping communities safe, while respecting and protecting the rights of suspects, victims and witnesses who come into contact with the criminal justice system. Their work is also central to the fight against torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment).

Despite a large volume of international, regional and national handbooks, guidelines and other tools on best police practices, awareness, accessibility and training on these standards by policymakers and police practitioners are still a challenge. The resource notes included in this practical resource toolkit for professional, human rights-compliant policing compile existing international law, standards, practices, guides and examples on best ways to improve performance and the protection of human rights. These resource notes can inform police reforms, improve efficiency, fairness and transparency in policing and law enforcement, and reduce risks and incentives to use torture and other forms of coercion.

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