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## Conseil des droits de l'homme

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**Promotion et protection de tous les droits de l'homme,  
civils, politiques, économiques, sociaux et culturels,  
y compris le droit au développement**

## **Rapport du Rapporteur spécial sur le droit de réunion pacifique et la liberté d'association, Maina Kiai**

### **Additif**

### **Mission au Royaume-Uni de Grande Bretagne et d'Irlande du Nord\* \*\***

#### *Résumé*

Le Rapporteur spécial sur le droit de réunion pacifique et la liberté d'association a effectué une visite officielle au Royaume-Uni du 14 au 23 janvier 2013 pour évaluer la situation du pays eu égard au droit de réunion pacifique et à la liberté d'association.

Après une introduction (chap. I), le Rapporteur spécial expose, dans le chapitre II, les mesures positives prises par les autorités ainsi que les points problématiques concernant le droit de réunion pacifique en Angleterre et au pays de Galles, en Irlande du Nord et en Écosse.

Dans le chapitre III, le Rapporteur spécial, bien que constatant que la liberté d'association est le plus souvent respectée au Royaume-Uni, recense les sujets de préoccupation en matière de lutte antiterroriste et de syndicalisme.

Enfin, dans le chapitre IV, le Rapporteur spécial présente ses conclusions et recommandations.

\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé, et il est distribué dans la langue originale seulement.

\*\* Soumission tardive.

**Annexe**

[Anglais seulement]

**Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, on his mission to the United Kingdom (14-23 January 2013)****Contents**

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## I. Introduction

1. The Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, undertook an official mission to the United Kingdom from 14 to 23 January 2013, at the invitation of the Government, for the purpose of making an in-depth assessment of the situation of freedoms of peaceful assembly and association in the country. He stresses that his mandate covers only those assemblies that are non-violent.

2. The Special Rapporteur visited the cities of London, Belfast and Edinburgh. In London, he met with officials from the Home Office, including the Home Secretary; the Foreign and Commonwealth Office; the Metropolitan Police Service; the City of London Police; the Association of Chief Police Officers; the Crown Prosecution Service; the Ministry of Justice; the Department for International Development; and the Cabinet Office Minister of State for Civil Society; representatives of the Parliamentary Joint Committee on Human Rights and of the Home Affairs Committee; representatives of Her Majesty's Inspectorate of Constabulary; the Independent Police Complaints Commission; and the Equality and Human Rights Commission.

3. In Belfast, he held meetings with two Junior Ministers; the Minister of State; the Chief Constable of the Police Service of Northern Ireland; representatives of the Charity Commission for Northern Ireland; representatives of the five main political parties within the Northern Ireland Assembly; the Police Ombudsman and Senior Director of Investigations; the Chair and Secretary of the Parades Commission; representatives from the Northern Ireland Human Rights Commission; and representatives of loyalist and nationalist organizations.

4. In Edinburgh, he met the Minister for Community Safety and Legal Affairs; representatives of the Strathclyde Police and the Glasgow City Council; and representatives from the Scottish Human Rights Commission.

5. In each city, the Special Rapporteur met representatives of civil society organizations, including protestors, members of non-governmental organizations, academics, lawyers and trade unionists.

6. The Special Rapporteur thanks all the people he met for the frank and very fruitful discussions held. He further thanks the British Government for its invitation and for its exemplary cooperation prior to and throughout the mission. He is also grateful to the Government for its continuous support to his mandate since its inception, and more generally for its efforts at promoting the rights to freedom of peaceful assembly and of association at the international level, including by co-sponsoring resolutions 21/16 and 22/10 on the rights to freedom of peaceful assembly and of association, and on the promotion and protection of human rights in the context of peaceful protests respectively.

7. The Special Rapporteur wishes to recognize the significant positive developments – over the last 15 years – in the broad democratization project within the United Kingdom, including devolution, independent accountability institutions and the creation of the Supreme Court. These must be commended and recognized as good practices, as no matter how old a democracy, there is always room for continued improvements.

8. In carrying out his assessment of the situation regarding the rights to freedom of peaceful assembly and of association in the United Kingdom, the Special Rapporteur is guided by several international legal standards. The most pertinent are the International Covenant on Civil and Political Rights, and articles 21 and 22 in particular; and the International Covenant on Economic, Social and Cultural Rights, especially article 8. Both Covenants were ratified on 20 May 1976 without reservations.

9. The Special Rapporteur hopes to continue the constructive dialogue with the Government through his recommendations made with a view to assisting it and other actors to fully guarantee the rights to freedom of peaceful assembly and of association in the country, which are essential components of democracy.

## **II. Right to freedom of peaceful assembly**

### **A. England and Wales**

#### **1. Legal framework**

10. The right of everyone to freedom of peaceful assembly is guaranteed under article 11 of the Human Rights Act (1998). Under this right, the authorities have a positive obligation to actively protect and facilitate peaceful assemblies, but also a negative obligation not to unduly interfere with this right.<sup>1</sup>

11. This right is further governed by a series of laws aimed primarily at ensuring public order, most notably the Public Order Act 1986. Under this Act, a regime of notification governs the holding of public processions (static assemblies are not subject to such a regime) whereby organizers must notify the authorities six days prior to the holding of the procession, which the Special Rapporteur considers to be too long. He is in favour of shorter notice, which is more conducive to the exercise of the right to freedom of peaceful assembly. He points out that the rationale behind notification is to facilitate the exercise of the right to freedom of peaceful assembly and to take measures to protect public safety, order and the rights and freedoms of others. He also notes that there is no specific provision allowing spontaneous processions, which should be exempted from prior notification.

12. Sections 12(1) and 14(1) of the Act enable a senior police officer to impose conditions on public processions and assemblies respectively, in relation to their time and/or place/route, when she/he reasonably believes that these will result in “serious public disorder, serious damage to property or serious disruption to the life of the community, or are intended to intimidate others”. The Special Rapporteur is circumspect about the threshold for imposing such conditions, which he finds to be too low, as it does not reflect the strict test of necessity and proportionality under article 21 of the International Covenant on Civil and Political Rights.

13. Section 13(1) of the Public Order Act allows for the prohibition of all public processions for a maximum period of three months and was the legal basis for imposing a blanket ban on marches of 30 days in three boroughs in London to prevent the English Defence League (EDL), a xenophobic group, from protesting. While such a measure has only been used twice in 30 years in London, the Special Rapporteur notes with concern that in 2004 all marches were banned for a month in Bradford due to a planned neo-Nazi march, and in 2010 all marches were banned for three days in Manchester, and later that year in Leicester, in advance of planned marches by the EDL. He firmly believes that blanket bans are intrinsically disproportionate and discriminatory measures affecting all citizens wanting to exercise their right to freedom of peaceful assembly. In this connection, he recalls that article 20 of the Covenant provides that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited”.

14. With regard to place-specific restrictions on assemblies, under section 143 of the Police Reform and Social Responsibility Act 2011, it is prohibited, in the controlled area of Parliament Square, to erect tents or any other structure for the purpose of facilitating sleep

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<sup>1</sup> A/HRC/20/27, paras. 33-42.

or staying in a place for any period. The Special Rapporteur is concerned that such a provision may in fact be aimed at prohibiting long-term peaceful protests in front of Parliament. In addition, under the Parliament Square Garden Byelaws 2012 the organization and participation in, inter alia, any assembly, display, performance, representation, parade, or procession are subject to prior authorization (section 5(1)(j)). In this regard, the Special Rapporteur is of the opinion that the exercise of fundamental freedoms should never be subject to previous authorization, but at most to a regime of notification.<sup>2</sup>

15. Under sections 12(4) and 14(4) of the Public Order Act, organizers may be held liable if they knowingly fail to comply with a condition imposed under these sections, and they must prove that such a failure arose from circumstances beyond their control. In this connection, the Special Rapporteur heard testimonies of many activists who expressed a fear of being held criminally responsible for offences committed by participants in the protests. In this regard, he stresses that organizers should never be held responsible, nor liable, for the unlawful conduct of others.<sup>3</sup>

16. Under section 5 of the Act, anyone is guilty of an offence whenever he or she uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress. The Special Rapporteur notes that the word “insulting” has recently been removed from the provision. He is nevertheless still concerned that direct action by peaceful protestors may be seen as falling within such a broad definition, and hence may curtail freedom of peaceful assembly.

17. In sum, the Special Rapporteur is concerned that the focus of the legal framework on freedom of peaceful assembly is overall more on ensuring public order, rather than on a human rights-based approach to facilitating peaceful assemblies.

## **2. Enjoyment of freedom of peaceful assembly in practice**

18. The right to freedom of peaceful assembly is widely exercised in the country. A large number of protests take place in London (around 4,000 per year according to the police) and other parts of the country, most of which take place without incident. The vast majority of these events are reportedly planned. Between 10 and 15 demonstrations per day on average are spontaneous.

19. The Special Rapporteur is mindful that the police have been facing considerable challenges in policing assemblies and demonstrations, which have sometimes turned violent, and that police officers have suffered casualties.

20. He acknowledges that policing of peaceful demonstrations, protests and assemblies has undergone significant changes since the G20 summit in London in April 2009, which was marked by instances of excessive use of force by law enforcement authorities, as epitomized by the death of a bystander, Ian Tomlinson. This tragic incident sparked the conduct of a review of the policing of public protests, at the request of the Metropolitan Police Commissioner, by Her Majesty’s Inspectorate of Constabulary (HMIC), an independent assessment institution. The latter identified a series of failures of the policing model, including “an absence of clear standards on the use of force for individual officers operating in the public order policing environment; out of date training and guidance; and inappropriate use of public order powers”.<sup>4</sup> HMIC stated however that “the police as a

<sup>2</sup> Ibid., para. 28.

<sup>3</sup> Ibid., para. 31.

<sup>4</sup> HMIC, *Adapting to protest – nurturing the British model of policing* (2009), pp. 5-7.

service has recognized and adopted the correct starting point for policing protest as the presumption in favour of facilitating peaceful protest”.<sup>5</sup>

21. The Special Rapporteur was informed that the authorities had learned from past mistakes, and that every attempt is now made to meet the needs of peaceful protestors while respecting the rights of others. The police reportedly have a “no surprise” approach towards protests. Unarmed ordinary police officers usually police demonstrations because they must be close to their communities; in case of escalation of violence, riots squads will be deployed. He was further informed that the police always seek a fine balance when policing demonstrations, especially in the light of media scrutiny. Police officers are trained on the Human Rights Act and on the use of force. In this regard, he welcomes the three diagrams devised by HMIC to assist police decision-making, which have reportedly been incorporated into the national public order manual of guidance.<sup>6</sup> These diagrams are certainly useful models to support human rights-compliant police command decision-making in relation to public order legislation. Finally, the police have used social media to warn protestors not to respond to calls from troublemakers.

22. Furthermore, the Special Rapporteur notes with appreciation the ruling Coalition’s commitment to “restoring the rights to non-violent protests”, made in May 2010.

23. Nevertheless, he was also informed of the following practices which are in his opinion detrimental to the free exercise of the right to freedom of peaceful assembly.

(a) *Undercover policing*

24. The Special Rapporteur is deeply concerned about the use of embedded undercover police officers in groups that are non-violent and take peaceful direct action by exercising their right to freedom of peaceful assembly

25. He was particularly dismayed to hear about the case of Mark Kennedy, an undercover police officer working for the National Public Order Intelligence Unit who infiltrated the environmental group Earth First, among other activist groups, from 2003 to 2010, and who informed his commanders about the preparation of demonstrations by this group. The cases of Mark Kennedy and other undercover officers such as Jim Boyling are shocking as the groups infiltrated were not engaged in any criminal activity. The duration of the infiltrations, and the resultant trauma and suspicion caused among the groups, in particular the women with whom the undercover police officers had intimate relationships, are totally unacceptable. It further appeared that undercover police officers had used dead infants’ identities, including names and dates and places of birth, to deceive activists, which is horrifying.<sup>7</sup>

26. The Special Rapporteur notes with satisfaction the review undertaken by HMIC on this issue,<sup>8</sup> and the acknowledgment by the police that lessons have been learned. At the time of the visit, the police were reviewing authorization for long-term undercover operations. However, he stresses that the matter goes beyond lessons for the police, and has left a trail of victims and survivors in its wake.

27. The Special Rapporteur regrets that, in the case of five women who had intimate relationships with undercover police officers and who claimed that their rights to private

<sup>5</sup> Ibid., p. 7.

<sup>6</sup> Ibid., pp. 135-139.

<sup>7</sup> *The Guardian*, “Police spies stole identities of dead children”, February 2012, available at: <http://www.guardian.co.uk/uk/2013/feb/03/police-spies-identities-dead-children>

<sup>8</sup> HMIC, *A review of national police units which provide intelligence on criminality associated with protest* (February 2012), available at: <http://www.hmic.gov.uk/media/review-of-national-police-units-which-provide-intelligence-on-criminality-associated-with-protest-20120202.pdf>

and family life and freedom from inhumane and degrading treatment were violated, the High Court ruled that the Investigative Powers Tribunal was competent to hear the case, hence preventing the victims from attending the hearing and seeing what documents the police would give in evidence.

28. The Special Rapporteur welcomes the interim report of the Home Affairs Committee, and echoes, *inter alia*, the following recommendation by the Committee: “[i]n matters which concern the right of the state to intrude so extensively and intimately into the lives of citizens, [the Committee] believe[s] that the current legal framework [governing undercover policing] is ambiguous to such an extent that it fails adequately to safeguard the fundamental rights of the individuals affected. [The Committee further] believe[s] that there is a compelling case for fundamental review of [this] legislative framework..., including the regulation of Investigatory Powers Act 2000”.<sup>9</sup>

(b) *Intelligence databases*

29. The Special Rapporteur heard repeated concerns about the existence of numerous databases collated by the police through various overt and covert means from protests and assemblies, allegedly containing personal details about peaceful protestors who have committed no offence. He finds such practices particularly disturbing.

30. The police have a legitimate duty to ensure that anarchy and violence are not part of protests. However, when it is unclear what the databases and intelligence on peaceful protestors are for, when people do not know whether their names are on these databases, what information is contained on them, for how long and in what way the information is used, tension and mistrust are likely to be exacerbated.

31. In this connection, the Special Rapporteur welcomes the judgement by the Court of Appeal dated 14 March 2013, which decided that the police acted unlawfully by secretly registering John Catt’s presence at more than 55 protests over four years on the National Domestic Extremism Database, maintained by the National Public Order Intelligence Unit. Mr. Catt, a non-violent anti-war activist labelled a “domestic extremist” by the police, has no criminal record. The Court of Appeal ordered the police to delete their records on Mr. Catt.

32. The practice of surveillance and intelligence databases undeniably has a “chilling effect” on protestors, who fear holding further protests, as highlighted by the Court of Appeal in the case *R. (Wood) v. Commissioner of Police for the Metropolis*.<sup>10</sup> It was reported that, for instance, student protests held in November 2012 were smaller than expected by organizers due to the students’ fear of being targeted.

33. The Special Rapporteur was also informed of private security companies reportedly collecting data on and taking pictures of peaceful protestors, such as the reported undercover surveillance by private companies of the Occupy Movement and Greenpeace, which is of concern to the Special Rapporteur.

(c) *Categorization of some groups of protestors as “domestic extremists”*

34. Another area of concern is the definition of “domestic extremism”, which is too broad. The Special Rapporteur learned that peaceful protestors fear that they could easily be grouped in this category, alongside real extremists. According to the Association of Chief Police Officers (ACPO), “[d]omestic extremism and extremists are the terms used for

<sup>9</sup> Home Affairs Committee, *Undercover Policing: Interim Report* (February 2013), available at: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/837/83702.htm>

<sup>10</sup> *R. (Wood) v. Commissioner of Police for the Metropolis* (2009).

activity, individuals or campaign groups that carry out criminal acts of direct action in furtherance of what is typically a single issue campaign. They usually seek to prevent something from happening or to change legislation or domestic policy, but attempt to do so outside of the normal democratic process”.<sup>11</sup> The definition was devised originally to cover violent animal rights activists. However, according to various accounts, it now encompasses everybody who protests, in particular the so-called “professional demonstrators”, a number of whom felt that they are considered to be “enemies of the State” by the authorities.

35. Some police officials, while ostensibly differentiating between extremist groups and others that use direct action, often conflate them, especially when the protest groups are horizontally organized, such as the Occupy Movement. The Special Rapporteur was dismayed to learn that the City of London police categorized the Occupy London movement as a terrorist group, alongside Al Qaida, in an advisory notice sent to the business community in the City of London.<sup>12</sup>

(d) *Tactic of containment or “kettling”*

36. Law enforcement authorities, when policing protests, have resorted on several occasions to the tactic of containment, also known as “kettling”, which consists of deploying a police cordon around a group of protestors, often for long periods, with a view to enclosing them and preventing other protestors from joining the “kettled” group. The authorities have justified this tactic by the need to prevent violence and damage to property.

37. The Special Rapporteur was particularly troubled to hear alarming stories of peaceful protestors, as well as innocent bystanders, including tourists, held for long periods with no access to water or sanitary facilities. The use of this tactic was challenged before British courts, most of which ruled in its favour. In 2009, the European Court of Human Rights in *Austin v United Kingdom* confirmed the decision of the British courts.<sup>13</sup> While the Special Rapporteur takes note of these decisions, which by no means constitute a blanket endorsement of “kettling”, he nevertheless believes that this tactic is intrinsically detrimental to the exercise of the right to freedom of peaceful assembly, due to its indiscriminate and disproportionate nature.

38. The practice of containment also undeniably has a powerful chilling effect on the exercise of freedom of peaceful assembly, as also highlighted by the Equality and Human Rights Commission.<sup>14</sup> In this connection, the Special Rapporteur was informed that many people refrained from exercising their right to freedom of peaceful assembly for fear of being “kettled”. Finally, it appears that “kettling” has been used for intelligence gathering purposes, by compelling peaceful protestors, and even bystanders, to disclose their names and addresses as they leave the kettle, increasing the chilling effect it has on potential protestors.

(e) *Excessive use of force*

39. The Special Rapporteur was also informed of allegations of excessive use of force further to the G20 London Summit in 2009, despite the aforementioned training provided to police forces. For instance, in December 2010 during protests in London against education cuts and higher education fees, the police reportedly “punch[ed] students who had their hands in the air, kick[ed] students who were on the floor, and ma[de] horse charges. 43

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<sup>11</sup> ACPO (2006).

<sup>12</sup> *The Guardian*, “*Occupy London’s anger over police ‘terrorism’ document*”, available at: <http://www.guardian.co.uk/uk/2011/dec/05/occupy-london-police-terrorism-document>

<sup>13</sup> *Austin v. UK* (2012).

<sup>14</sup> Equality and Human Rights Commission, *Human Rights Review 2012*, p. 379.

protesters were taken to hospital, [and] one student... had to undergo a three-hour brain operation for a stroke after being hit by a police truncheon".<sup>15</sup> Some of the police officers covered their ID numbers and/or wore balaclavas, making it impossible to identify who was responsible. A number of peaceful protestors against the evacuation of travellers from Dale Farm on 19 October 2011 were also reportedly brutalized.

40. In this connection, the Special Rapporteur echoes the concern expressed by the Joint Committee on Human Rights that there is "no specific guidance setting out the circumstances in which the use of the baton against the head might be justifiable".<sup>16</sup> He further echoes the following statement of HMIC in its key 2009 review, which seem today to be still relevant: "[i]t is hard to overestimate the importance for officers to understand the law when each individual officer is legally accountable for exercising their police powers, most particularly the use of force".<sup>17</sup>

(f) *Pre-emptive measures*

41. The Special Rapporteur was troubled to learn that the authorities had used pre-emptive common law powers on several occasions, including verbal warnings and arrests, against individuals suspected of being likely to commit offences during protests. He is concerned that such measures may impede the exercise of the right to freedom of peaceful assembly of peaceful protestors.

42. It was reported that the police visited some protestors at their homes, including at night, prior to planned protests, warning them not to commit any illegal acts. Furthermore, a number of individuals were pre-emptively arrested on the day of the royal wedding (29 April 2011) on the grounds that it was necessary to prevent anticipated breaches of the peace, and others had their houses searched following the execution of search warrants. While noting that the first instance court ruled in favour of the authorities, the Special Rapporteur expresses concern at such pre-emptive measures, which are neither necessary nor proportionate, as violent intentions should not be presumed peremptorily.

(g) *Stop-and-search powers*

43. The use of stop-and-search powers has been reported on a number of occasions in the context of peaceful protests. For instance, in 2008, the Kent police searched all individuals attending the Climate Camp at Kingsnorth power station, under section 1 of the Police and Criminal Evidence Act 1984. This measure was legally challenged by three protestors as being an unlawful blanket search policy. In January 2010, the Kent police settled the claim, and a court order stated that each stop and search of the three individuals was unlawful as the police officers had exceeded their powers under section 1 of the Police and Criminal Evidence Act 1984, and article 11 of the Human Rights Act had been violated.<sup>18</sup>

44. Under the Terrorism Act (2000), law enforcement authorities are given wide powers to stop and search individuals. Under sections 44 and 45, a police officer, subject to an authorization granted by a senior officer, could stop and search anyone without reasonable suspicion. Such broad powers were used on several occasions, and the Independent Reviewer of Terrorism Legislation<sup>19</sup> and the Joint Committee on Human Rights<sup>20</sup>

<sup>15</sup> Joint Committee on Human Rights (JCHR), *Facilitating Peaceful Protest* (2011), para. 47, available at: <http://www.publications.parliament.uk/pa/jt201011/jtselect/jtrights/123/123.pdf>

<sup>16</sup> *Ibid.* para. 18.

<sup>17</sup> *Human Rights Review 2012* (see note 14 above), p. 389.

<sup>18</sup> *R (Morris, E. and T.) v. Chief Constable of Kent Police* (2009).

<sup>19</sup> Independent Reviewer of Terrorism Legislation, *Report on the Operations in 2007 of the Terrorism Act 2000 and of Part I of the Terrorism Act 2006* (2008).

condemned the use of counter-terrorism powers by the police against peaceful protestors. In addition, a decision by the European Court of Human Rights stated that sections 44 to 47 of the Terrorism Act 2000 violated the right to respect for private and family life under article 8 of the Human Rights Act.<sup>21</sup> In 2012, section 44 was replaced by new powers under section 47A with a higher threshold: under this new provision, an authorization to stop and search can only be granted when the senior officer “reasonably suspects that an act of terrorism will take place”, and the authorization can only last and cover an area that he or she reasonably considers necessary to prevent such an act. The Special Rapporteur welcomes the repealing of section 44, and notes with satisfaction that section 47A of the Terrorism Act (2000) has not been used in the last two years despite major events such as the Royal Wedding in April 2011, the Diamond Jubilee celebrations in June 2012, and the Olympic Games in July and August 2012.<sup>22</sup> He nevertheless warns against any use of such wide stop-and-search powers, which should never be used against peaceful protestors.

(h) *Police bail with conditions*

45. The Special Rapporteur is concerned about very strict police bail conditions which have been imposed on detained protestors with a view to deterring them from further exercising their rights. In November 2012, a group of climate protestors held a peaceful demonstration on the site of a power station that is being built in northern England. The following bail conditions were subsequently imposed on the participants of this demonstration: a ban on associating with one another, and the obligation to reside at their home addresses under curfew from 9 p.m. to 7 a.m. and to report to a police station three times a week. In the case of the so-called “Critical Mass”, a monthly mass cycle journey through central London which has taken place since 1994, 182 cyclists were arrested under section 12 of the Public Order Act on the evening of the opening ceremony of the Olympic Games on 27 July 2012. Many arrestees had bail conditions imposed on them preventing them from entering Newham Borough on a bicycle, or from approaching within 100 metres of an Olympic venue. The Special Rapporteur believes that the bail conditions in these cases were excessive.

46. The Special Rapporteur raised the issue of police bail conditions with the authorities, and was told that such conditions may be challenged before a court. However he is concerned that the process is costly and can be a strain to some, especially when legal aid is being cut as part of austerity measures.

(i) *Private injunctions*

47. The Special Rapporteur is also concerned about the increased use by private companies of civil injunctions, under the Protection from Harassment Act 1997, initially devised to protect individuals from stalkers, with a view to stopping peaceful protests. Such injunctions are reportedly difficult to legally challenge. He echoes the concerns expressed by the Joint Committee on Human Rights in 2009 that “the Protection from Harassment Act (which was not designed to deal with protestors, but has developed over time to encompass this area of activity) has the potential for overbroad and disproportionate application”.<sup>23</sup>

48. For instance, in November 2012, the owners of a power plant under construction (see para. 45 above) served a permanent injunction against the climate protestors who held

<sup>20</sup> JCHR, *Demonstrating respect for rights? A human rights approach to policing protest* (2009).

<sup>21</sup> European Court of Human Rights, *Gillan and Quinton v. UK* (2009).

<sup>22</sup> Based on discussion with David Anderson Q.C., current Independent Reviewer of Terrorism Legislation, during the visit.

<sup>23</sup> JCHR *Demonstrating respect for rights? A human rights approach to policing protest* (see note 20 above), para. 99.

a peaceful protest on the site of the power plant. Civil injunctions were also delivered against Occupy London activists by the City of London, including in relation to the protest at St Paul's cathedral, and the Special Rapporteur regrets that first instance and appeal courts ruled in favour of these injunctions.

49. The issue of aggravated trespass under the Criminal Justice and Public Order Act 1994, curtailing the right to freedom of peaceful assembly, is also of great concern to the Special Rapporteur. For instance, on the occasion of the March for the Alternative organized by the Trades Union Congress (TUC) in March 2011, protestors sat down at the department store Fortnum & Mason, without preventing customers from undertaking shopping activities, yet 138 were arrested and charged with aggravated trespass, of whom 29 were subsequently prosecuted. Aggravated trespass is all the more troubling in the context of the increasing privatization of public space, especially in the City of London. In this connection, the Special Rapporteur points to an important decision taken by an Amsterdam District Court in 2012 in relation to the alleged breach of an injunction passed by Royal Dutch Shell against Greenpeace, which held demonstrations on Shell property. The Court ruled that the "mere fact that such an action causes nuisance or loss for the business targeted by the action – in this case Shell – does not make such an action illegal" and that "future Greenpeace actions against Shell cannot be banned in advance provided that they remain in a certain framework... [which includes] for example, a time limit for protesters to occupy petrol stations".<sup>24</sup> He welcomes this decision, which should serve as inspiration for judges in the United Kingdom.

(j) *Protest liaison police officers*

50. The Special Rapporteur takes note of the establishment and use of protest liaison officers to manage peaceful demonstrations in consultation with the organizers. While the rationale for this measure is praiseworthy, it is still unclear to what extent in practice pre-emptive liaison facilitates operational planning. He warns that negotiations should never be seen by the authorities as an opportunity to exert an insidious form of control. In this regard, he echoes the views of the Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights (OSCE-ODIHR) Panel of Experts on the Freedom of Peaceful Assembly, which stated that "organizers of peaceful assemblies should not be coerced to follow the authorities' suggestions if these would undermine the essence of their right to freedom of peaceful assembly".<sup>25</sup>

51. Furthermore, in order for the protest liaison system to function properly, the Special Rapporteur stresses that it is necessary to separate the liaison function from intelligence gathering, which negates the goodwill and good relations that police liaison officers can foster, by fuelling mistrust among protestors. In this regard, the Special Rapporteur was not reassured by the statements made by officials from the Home Secretary and the City of London Corporation, who stated that protest liaison police officers are first and foremost police officers whose role is to ensure public order and therefore have a mandate to gather intelligence.

(k) *Monitoring of demonstrations by civil society*

52. The Special Rapporteur finds particularly helpful the practice of inviting non-governmental organizations to monitor protests and the policing around them, including by inviting the monitors to the command control room. For instance, he considers the

<sup>24</sup> BBC, "Dutch court rejects Shell protest ban" (5 October 2012), available at: <http://www.bbc.co.uk/news/world-europe-19853007>

<sup>25</sup> Submission by the OSCE-ODIHR Panel of Experts to a questionnaire in preparation for the first thematic report of the Special Rapporteur: see A/HRC/20/27, para. 40.

invitation from the London Metropolitan Police to Liberty, an independent human rights organization, to act as an independent observer during the TUC march in London in 2010, to be a good practice. Independent monitoring is crucial for law enforcement authorities, giving them an opportunity to genuinely learn from their mistakes.

53. Nevertheless, the Special Rapporteur received conflicting information about monitors having been labelled as anti-social activists or targeted by law enforcement authorities during peaceful protests. For instance, on 19 October 2011, during the eviction of travellers from Dale Farm, the police fired a taser gun in the direction of one legal observer, and arrested another for obstructing a bailiff, although he was reportedly very visibly taking notes. In addition, observers were subject to verbal abuse and physical intimidation by bailiffs. Another disturbing practice is media infiltration of legal observers such as that carried out for two months by *The Sun* newspaper putting at risk the crucial work of observers. The Special Rapporteur firmly condemns such acts.

(l) *Police accountability*

54. The Special Rapporteur spoke to the Independent Police Complaints Commission (IPCC) in charge of investigating the most serious complaints and allegations of misconduct by police officers in England and Wales. An alleged victim of police misconduct must first make a complaint to the police, who will then decide whether or not to take up the complaint. If it decides not to, the victim can appeal before the IPCC. From April to September 2012, the IPCC upheld 44 per cent of appeals made before it at the national level.<sup>26</sup> The Commission also issues recommendations to the police about the policing of protest and public order incidents as a result of its investigations. However, the police are not required to respond to IPCC recommendations.

55. The Special Rapporteur regrets that the Commission has lost credibility in the eyes of civil society, which sees it as not being independent due to the fact that it does not report to Parliament, but to the Home Secretary; a substantial number of IPCC investigators come from a police background (this is the case for all senior investigators and for 9 out of 20 deputy senior investigators); and it has insufficient resources.

## **B. Northern Ireland**

### **1. Contextual background**

56. Northern Ireland has gone through a history of sectarian divisions, inequalities and conflict that has a direct bearing on the exercise of the right to freedom of peaceful assembly. The Special Rapporteur, in the course of meetings with different interlocutors, was often referred back to historical facts as background to contemporary events and claims.

57. The hostilities and violence that have characterized recent history in Northern Ireland can be traced back to the colonization of what was then referred to as Ulster in the 1600s. The fault lines can roughly be identified as protestant/unionist/loyalist (most preferring that Northern Ireland remain a constituent part of the United Kingdom) and Catholic/republican/nationalist (preferring to be included within the Republic of Ireland). Unionists/loyalists are mostly Protestants, and republican/nationalists are mostly Catholics although these categories do not always neatly correspond to that dichotomy.

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<sup>26</sup> Independent Police Complaints Commission, Police complaints statistics for police forces and the IPCC, available at: [http://www.ipcc.gov.uk/en/Pages/police\\_complaints\\_stats.aspx](http://www.ipcc.gov.uk/en/Pages/police_complaints_stats.aspx)

58. The Special Rapporteur was informed that the deep-seated tensions, divisions and contestations within society are often displayed in relation to three issues: flags, emblems and parades. The contention around these issues is the result of a failure within the political settlement in the Good Friday Agreement of 1998 to draw up a framework for addressing underlying questions related to, *inter alia*, manifestations of culture, religion, nationality and identity and the situation of victims and survivors of atrocities carried out by both sides, particularly during the period known as “the Troubles”. The critical need for the political leadership in Northern Ireland to urgently find resolution on outstanding issues could not have been more evident to the Special Rapporteur than during the violent riots following a decision by the Belfast City Council in late 2012 to fly the British flag for only a few days a year.

59. Parades, processions, carnivals, commemorations and other assemblies in Northern Ireland are linked to the history, identity, culture, traditions, politics and religious beliefs of the people of Northern Ireland. There are approximately 4,500 parades annually and of these 226 are sensitive (this includes the 51 weekly Portadown protest parades). Parades by the loyalist orders (a term that refers to the Orange Order, the Apprentice Boys of Derry and the Royal Black Preceptory) account for the majority of the parades. Most of the parades are held in towns and villages all over Northern Ireland during what is known as the “marching season” between March and August each year. Other assemblies related to activities by trade unions and charities also take place, but these are far fewer and much less contentious.

## 2. Legal framework

60. Northern Ireland is a distinct legal jurisdiction from the rest of the United Kingdom; however, the Human Rights Act applies throughout Great Britain and Northern Ireland.

61. Section 1 of the Public Processions (Northern Ireland) Act 1998 establishes the Parades Commission, whose functions include promoting and facilitating mediation to resolve disputes concerning public processions and promoting greater understanding amongst the general public on issues concerning public processions. Section 6(2) requires notification to the Commission of an intended procession at least 28 days before the event. The Special Rapporteur, who favours short notice, cautions that this is an exceptional measure aimed at allowing all parties concerned time to reach agreement on a contested issue in view of the historical divisions which should be reviewed regularly to ensure that the conditions warranting it still exist. The notification should specify the route, date, number of likely participants and supporters, bands taking part, the name and address of the organizer and arrangements by the organizer to control the procession. Subject to some exceptions, organizers and participants who take part in a procession that does not comply with the notification requirements of the Act or that does not adhere to the date, time or route stipulated in the notification will incur liabilities. Section 7 provides that protest meetings related to processions require notice of at least 14 days and lists further requirements, similar to those in relation to a procession. Sections 8 and 9A of the Act grant the Parades Commission authority to impose conditions on proposed public processions and on related protests, having regard to a number of factors which may impact on the community.

62. The Public Order (Northern Ireland) Order 1987, as amended by the Public Processions (Northern Ireland) Act 1998, provides for police action where public meetings may cause serious public order problems, serious damage to property or serious disruption to the life of the community or may aim at intimidating others. Under article 4(2), a senior police officer may impose conditions on the location, duration and number of participants as necessary to avert such incidents. Section 11 of the Public Processions (Northern Ireland) Act 1998 provides that the Secretary of State may impose a ban on a specific

public procession or on all public processions in any area and any period of time not exceeding 28 days if s/he considers that it is necessary to do so in the public interest to prevent any serious public disorder, serious disruption to the life of the community, or serious impact which the procession may have on relationships within the community, or undue demands which the procession may cause to be made on the police or military forces. While noting that no parade has been banned since 1996, the Special Rapporteur warns against the use of such blanket bans on public processions and meetings, which once again are intrinsically disproportionate and discriminatory.

63. Article 20 of the Public Order (Northern Ireland) Order 1987 provides for the offence of “obstructive sitting, etc., in public space” against anyone who wilfully obstructs or seeks to obstruct traffic. The Special Rapporteur is concerned that such a broad provision may be used to impede the exercise of the right to freedom of peaceful assembly.

64. The Special Rapporteur heard various concerns including that the law on parades was not clear, such that groups of people making their way to and from a static assembly might be deemed to be participating in a parade; that it is unclear when it is permissible for protests to obstruct traffic and in which situations the police should take action to prevent this. He urges the State to provide clarity on these questions.

### **3. Enjoyment of freedom of peaceful assembly in practice**

#### *(a) The Parades Commission*

65. The Parades Commission does not enjoy the support of all segments of society. There was general agreement on the need for an independent institution to regulate parades and to mediate contentious issues. There was less agreement that the Parades Commission was effectively discharging this role.

66. The Special Rapporteur was informed by representatives of the nationalist community on the one hand, that the Parades Commission did not do enough to protect them from loyalist parade participants who engaged in violence during their parades and in general displayed intimidating, confrontational or disrespectful behaviour when marching through their communities. The music played by bands, particularly in the vicinity of places of worship, was highlighted as a particular area of contention. Loyalists on the other hand perceived the Parades Commission, by imposing conditions on their parades (in relation to routes, time and music), as unduly restricting what they considered to be their right to parade, their freedom to express their cultures and manifest their religious beliefs. They accused the Parades Commission of placating the Republican Community (to the disadvantage of Loyalists) in seeking their views on notified parades. The Orange Order in particular expressed a reluctance to engage with the Commission, citing what it considers to be unfair determinations and also the criminal liability organizers may incur during the conduct of a parade.

67. The Special Rapporteur points out that the right to freedom of peaceful assembly is not an absolute right, as provided by article 21 of the International Covenant on Civil and Political Rights. Limitations imposed in accordance with these legitimate interests by the Parades Commission are justifiable and may relate to the time, place and manner of parading. Conversely, a proportionate approach to weighing the rights of all parties involved in a parade may necessitate facilitating marches through contested routes. The Special Rapporteur emphasizes that decisions of the Parades Commission should be fully rooted in the human rights framework as this constitutes an objective and justifiable means of balancing the competing interests inherent in the process. Concerns that certain parades interfere with the rights and freedoms of others can thus be balanced by understanding that on the one hand pluralism, tolerance and broadmindedness are the hallmarks of a democratic society, but on the other hand article 20 of the Covenant applies.

68. Perceptions of ill motives, communal loss, oppression, disregard for the views and concerns of others, and disrespect for and suppression of traditions, culture and religion abound in the context of parading. The need for dialogue and accommodation of all affected parties' views and concerns cannot be overstated. In this regard, the Special Rapporteur recalls the positive experience of Derry/Londonderry where engagement amongst all affected parties has resulted in peaceful parades in recent years. He also stresses the positive role of civil society organizations which have facilitated dialogue between communities. Fundamentally, wherever there has been dialogue, there has been progress.

(b) *Liability of organizers*

69. According to the Parades Commission's Parades Organiser's Guide, "the main responsibility for a parade and its participants lies first and foremost with the parade organizer. The parade organizer is responsible for ensuring a pre-planned well-organized and peaceful event that has little or no negative impact on the local community". Organizers of parades are required to provide their names and addresses in the notification. Failure to comply with the determinations of the Parades Commission attracts criminal sanction, the consequence of which in some cases is reluctance by organizers to identify themselves as such.

70. It is a good practice for assembly organizers to take reasonable steps to ensure the peacefulness of an assembly, including by liaising with law enforcement officials at all stages of planning and execution of the event, appointing assembly stewards, complying with legal requirements etc. However, organizers should not incur liability for the unlawful or violent acts of others.

(c) *Policing of parades and other forms of assemblies*

71. The Police Service of Northern Ireland (PSNI) is responsible for facilitating the conduct of parades and regulating other demonstrations and protests. The Special Rapporteur commends the overall good approach adopted by the PSNI in policing parades and protests. He is mindful that the PSNI undertakes a very difficult task in a very tense environment. He welcomes the fact that the practice of containment or "kettling" is not used in Northern Ireland. He further welcomes the practice of inviting a human rights adviser to the control room to advise on and assess the proportionality of police action. He nevertheless cautions about the use of Attenuating Energy Projectiles (AEP or plastic bullets rounds), which can be lethal. In this regard, he recalls that the Committee against Torture recommended in 1998 the "abolition of the use of plastic bullet rounds as a means of riot control".<sup>27</sup> Of particular concern also are allegations of gender-based violence by law enforcement officials during the policing of demonstrations.

72. Interlocutors expressed dissatisfaction with the PSNI, which they perceived as not being even-handed in responding to parades and protests. The Special Rapporteur also received complaints that the police often did not decisively respond to protests that turned violent by arresting or prosecuting offenders. The Special Rapporteur understands that the history of policing in Northern Ireland not only significantly influences people's perception and expectations of fairness in police action, but also conditions police responses. He emphasizes that the police have the responsibility to counter negative perceptions and expectations by increasingly engaging transparently with the communities, including by clarifying their law enforcement role.

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<sup>27</sup> A/54/44, para. 77(d).

73. Independent oversight of the police lies with the Police Ombudsman. The Special Rapporteur appreciates the efforts made by the Office of the Police Ombudsman to investigate complaints of excessive use of force. He notes that many of the interlocutors preferred to adopt a “wait and see” attitude in relation to the Police Ombudsman.

## **C. Scotland**

### **1. Contextual background**

74. The Scottish Government and Scottish Parliament exercise devolved executive and legislative power respectively. The Scotland Act 1998 provides the legal framework for the establishment of the devolved structures. The Scottish Government intends to hold a referendum on independence from the United Kingdom in 2014.

75. There are similarities in the parading tradition between Scotland and Northern Ireland, albeit not with respect to the number of parades or the intensity of the tensions around them. Over a thousand parades are held in Scotland annually and, as in Northern Ireland, the vast majority of these are by the Orange Order. Republicans similarly conduct parades. As in Northern Ireland, bands are a common feature of parades on both sides of the divide.

### **2. Legal framework**

76. The Human Rights Act applies to Scotland as to other regions in the United Kingdom. The Civic Government (Scotland) Act 1982 as amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006, regulates the holding of processions, while certain sections of the Public Order Act 1986 regulate the holding of static assemblies. Section 70 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 amends the requirement for organizers of an intended procession to provide notification no later than 28 days (instead of seven days) before the date when the procession is to be held. This requirement applies to all processions except funeral processions organized by a funeral director and processions specified or described in an order by the Scottish Ministers. Local authorities, in considering whether and what conditions to place on a procession, may take account of the effects of the holding of a procession on public order, public safety, damage to property, and disruption of community life, the conduct of the organizers and participants of the procession in previous processions and also the extent to which managing the procession would place an excessive burden on the police.

77. The Special Rapporteur notes that the 28-day notice period is underpinned by a desire to ensure that notifications are given due attention, facilitation of the events is effectively planned and all concerned parties are adequately consulted. He however believes that a much shorter notification period should be in place as a majority of the processions in Scotland recur annually, such as those held by the Loyal Orders, and therefore these types of processions are fairly predictable as to facilitation needs.<sup>28</sup> By contrast, processions and assemblies taking place for the first time constitute a minority of the events for which prior notification is required. Even in these cases, it cannot be presumed that a 28-day notification period is necessary. Notification procedures should be subject to a proportionality assessment. This implies that the period within which a prior notification is required to be submitted should be proportionate to the objective the

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<sup>28</sup> That notifications serve different needs in relation to various categories of processions is implicitly acknowledged in the *Review of Marches and Parades in Scotland: Guidance for Scottish Local Authorities* (2006), paras. 6-7 and 22. It should be possible to complete all the steps for processing notifications well before the end of the 28-day period, as stated in paragraph 89.

notification is supposed to achieve. A 28-day notification is inordinately long considering that processions in Scotland do not raise overly complex questions for resolution. A waiver of this notice period can be granted only in exceptional circumstances and therefore does not ease this requirement.

### 3. Enjoyment of freedom of peaceful assembly in practice

78. Parades are generally largely peaceful and well facilitated by the police. The increasing use of dialogue and negotiation between local authorities and police on the one hand, and organizers of parades and protests on the other, in order to ensure that these events take place with minimal difficulty, is commendable.

79. Nevertheless, the Special Rapporteur received information about pre-emptive measures such as police officers knocking on doors on the eve of a planned protest warning the protestors not to commit illegal acts. Considerable surveillance during peaceful protests (extensive filming and photographing of protestors) was also reported to the Special Rapporteur, which is again of concern to him.

80. The Special Rapporteur is particularly concerned at the costs of policing processions as local authorities have the discretion to recoup some of the expenses incurred in facilitating a march from organizers. The distinction drawn between charging for holding of peaceful assemblies and recovery of costs for facilitating assemblies, as explained by the Glasgow City Council, appears to be erroneous. Requiring organizers to pay for the provision of public safety, hygiene facilities and after-event clean-up as a condition for a parade taking place constitutes a considerable restriction on the exercise of the right to freedom of peaceful assembly. The broad discretion granted to local authorities to determine when and how cost recovery should be implemented opens up the possibility of unequal application of cost recovery measures across localities and parading groups.

81. The Special Rapporteur believes that financial charges should not be levied for the provision of public services during an assembly.<sup>29</sup> He understands that marches and parades of the magnitude sometimes held in Glasgow require a large amount of resources to ensure public order and safety. Nevertheless, cost recovery measures place an unjustifiable burden on parade organizers and have the effect of unduly restricting the exercise of peaceful assembly. The duty of States to facilitate and protect peaceful assemblies includes the responsibility to provide policing, medical services and other health and safety measures.<sup>30</sup> The costs associated with these services are substantial enough to deter most organizations from holding assemblies, thus creating a chilling effect on the exercise of the right.

## III. Right to freedom of association

82. The Special Rapporteur was pleased to note that freedom of association is generally enjoyed in the United Kingdom as evidenced by the vibrant and flourishing civil society sector. According to the Charities Commission, there are slightly over 162,900 charities in England and Wales, most of them with an annual income of between £0 and £10,000.<sup>31</sup> In Northern Ireland, the relatively new Charities Commission currently has a list of nearly 6,740 organizations which are deemed to be charities by virtue of their registration with Her

<sup>29</sup> A/HRC/20/27, para. 31.

<sup>30</sup> Ibid.

<sup>31</sup> As at 31 December 2012. Available at: [http://www.charity-commission.gov.uk/About\\_us/About\\_charities/factfigures.aspx](http://www.charity-commission.gov.uk/About_us/About_charities/factfigures.aspx)

Majesty's Revenue and Customs for purposes of charitable tax.<sup>32</sup> Over 23,600 charities have been registered by the Office of the Scottish Charity Regulator.<sup>33</sup> The Special Rapporteur commends the United Kingdom for its continued efforts to review the legal framework governing charities to ensure that an enabling environment is maintained. Nevertheless, the following issues were brought to the attention of the Special Rapporteur, which he calls upon the State to resolve.

## A. Counter-terrorism measures

83. The United Kingdom bears the responsibility of ensuring the safety and security of its population. In this connection, the Special Rapporteur was informed of the adverse impact that counter-terrorism measures have had on non-profit organizations and the disproportionate impact on communities such as Tamils, Kurds or Baloch, and on Muslim charities. A number of organizations have been proscribed although there was reportedly no proof that these organizations had been active in terrorist activities, as stressed by the Independent Reviewer for Terrorist Legislation. Such measures have had a deterrent impact on these communities, which have on occasion been afraid of expressing themselves publicly. The Special Rapporteur emphasizes that special attention should be paid to the possible discriminatory effects of such measures.

84. One of the main concerns often raised by Muslim charities and charities operating in countries deemed sensitive, is restrictions they face in transferring and spending funds. These restrictions take many forms including the inability to open bank accounts, arbitrary closure of accounts, inordinate delays or termination of transactions, onerous requirements such as knowing one's donors and beneficiaries and the vulnerability to accusations of terrorist links among others. The banks have reportedly closed accounts or delayed payment of local staff out of fear of civil litigation in the United Kingdom and regulatory sanctions in other countries. Restrictions such as these that obstruct the flow of funds threaten the operations of organizations and even their very existence.

85. The Special Rapporteur wishes to reiterate that any restrictions on the right to freedom of association must meet the standards set out in the International Covenant on Civil and Political Rights. This includes any limitations imposed in the context of counter-terrorism measures as drawn up by the Special Rapporteur on the promotion and protection of human rights while countering terrorism.<sup>34</sup> Restrictions must be necessary and proportionate, and this means that restrictions should not be applied in lieu of carrying out risk assessments on a case-by-case basis. Measures taken to limit rights must be appropriate to achieve their objective and a balance must be struck between the burden placed on the individual whose rights are limited and the interest of the general public in achieving the aim that is being protected.<sup>35</sup> Denial of banking facilities including bank accounts and funds transfer facilities without reasonable suspicion that the targeted organization or transaction constitutes support of terrorism or money laundering is a violation of the right to freedom of association. Further, singling out certain organizations on the stereotypical assumption based on general characteristics such as religion, predominant race of the organization's membership that they are likely to participate in terrorist activities is not only disproportionate, it constitutes discrimination and is prohibited under international law.

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<sup>32</sup> The registration of charities in Northern Ireland has not yet commenced. Available at: [http://www.charitycommissionni.org.uk/Start\\_up\\_a\\_charity/Guidance\\_on\\_registering/The\\_registration\\_process\\_index.aspx](http://www.charitycommissionni.org.uk/Start_up_a_charity/Guidance_on_registering/The_registration_process_index.aspx)

<sup>33</sup> Available at: <http://www.oscr.org.uk/>

<sup>34</sup> A/61/267, paras. 15-22.

<sup>35</sup> *Ibid.*, para. 21. See also A/HRC/23/39, paras. 22-26.

## B. Trade unionism

86. The right to form or join a trade union and to engage in trade union activities is an integral part of the freedom of association. The International Labour Organization (ILO) has developed standards to which States must adhere to in order to ensure trade union rights. The Special Rapporteur was made aware of two persistent concerns relating to trade unionism: the blacklisting of individuals engaged in trade union activities, and limitations on the right to strike. Although ILO is apprised of the issues and has engaged with the Government in an effort to resolve them, the Special Rapporteur finds it necessary to also highlight the seriousness of these concerns.

87. The blacklisting of individuals who have been engaged in trade unionism was raised with ILO as far back as 1992. Employers, by maintaining or having access to blacklists, deny employment opportunities to individuals on these lists sometimes for long periods of time. The construction industry has been particularly affected by the widespread use of blacklists. Recent investigations by the Information Commissioner's Office revealed that 44 construction companies had used the services of a firm that maintained a blacklist during the period between April 2006 and February 2009. The Special Rapporteur recalls the findings of ILO that such practices constitute a violation of the principles of freedom of association.<sup>36</sup> Denial of employment on the basis of participation in union activities also constitutes anti-union discrimination.

88. Of concern to the Special Rapporteur is the fact that measures taken to address these concerns fall short of what is necessary to eradicate the practice of blacklisting and to provide adequate redress to victims. Inadequate sanctions have been imposed on those found to have compiled or used blacklists. The Employment Relations Act 1999 (Blacklists) Regulations 2010 prohibit the compilation, use, sale or supply of "prohibited lists", which are defined to be lists that contain details of persons who have taken part in trade union activities and which are used for the purpose of anti-union discrimination. Nevertheless, the prohibition is not a criminal offence; the regulations arguably do not establish a right not to be blacklisted and therefore no compensation would be payable in case of violation; and trade union activities are not defined and may be interpreted narrowly. The Special Rapporteur considers that additional measures to fill these gaps and ensure sufficient deterrence against would-be offenders will better protect employees involved in trade unionism.

89. The right to strike is not explicitly protected in legislation and secondary picketing has been prohibited since 1982. The implications of this state of affairs are enormous in terms of preserving workers' ability to protect their rights within the employment relationship. For example, according to the Trade Union and Labour Relations (Consolidation) Act 1992 (sect. 219) action taken in pursuance of a trade dispute is generally permitted. Nevertheless, a trade dispute is defined as a dispute related to one or more listed items between employers and employees (sect. 244). This narrow definition is problematic in that complex corporate structures involving holding companies, subsidiaries, agency and other industrial arrangements may prevent workers from taking action against entities responsible for the terms and conditions of work, even where these entities are not their direct employers. Further, workers cannot take secondary strike action in solidarity with others who may be engaged in a lawful strike over similar concerns. Although workers may take industrial action against employers, the procedural requirements for such action to take place are burdensome and in many cases are exploited by employers to frustrate strike action. Unions can only embark on a strike after balloting their members, a detailed and

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<sup>36</sup> ILO Committee on Freedom of Association Case No. 1618 (United Kingdom), Interim Report – Report No. 283 (June 1992), para. 444.

technical process, interpretations of which employers take advantage of to apply for injunctions against the proposed action.

90. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) “raised the need to protect the right of workers to take industrial action in relation to matters which affect them even though, in certain cases, the direct employer may not be party to the dispute, and to participate in sympathy strikes provided the initial strike they are supporting is itself lawful.”<sup>37</sup> The Special Rapporteur echoes these comments and emphasizes that the right to strike is a legitimate and integral part of the activities of a trade union. Any restrictions to this right, such as those arising from limiting the ability to strike and prohibiting secondary strikes, have to meet the strict test set out in article 22 of the International Covenant on Civil and Political Rights of necessity in a democratic society for the identified legitimate interests. The Special Rapporteur is convinced that the limitations around strike action do not meet this test.

## IV. Conclusion and recommendations

### A. Conclusion

91. **The Special Rapporteur reiterates the utmost importance of the rights to freedom of peaceful assembly and of association in a democratic society. This is all the more important as the United Kingdom, like much of the world, is going through some serious economic challenges that will undoubtedly cause dislocation and discontent. It is in such difficult times, with angry and frustrated citizens, that the respect for such rights must be at its highest.**

92. **The Special Rapporteur further stresses the importance of maintaining a culture of learning and improving by systematically using a human rights-based approach in all areas pertaining to the rights of freedom of peaceful assembly and of association. He is confident that the Government will see the following recommendations as an opportunity to consolidate the improvements made over the years in relation to the realization of these rights in the country. This would no doubt have a deep resonance at the international level, and influence other countries positively.**

### B. Recommendations

#### **Right to freedom of peaceful assembly**

##### *England and Wales*

93. **The Special Rapporteur calls on the competent authorities to:**

- **Adopt a positive law on the right to freedom of peaceful assembly whose purpose is to facilitate and protect such right, in full consultation with civil society and other relevant stakeholders;**
- **Undertake a judge-led public enquiry into the Mark Kennedy case, and other related cases, with a view to giving a voice to victims, especially**

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<sup>37</sup> Observation by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) – adopted 2012, published 102nd ILC session (2013).

women, who had been deliberately deceived by their own government, and paving the way for reparations;

- Review legislation governing undercover policing specifying that peaceful protest groups should not be infiltrated;
- Adopt a law on intelligence gathering with a view to increasing the accountability of intelligence services;
- Delete any records on peaceful protestors on the National Domestic Extremism Database and other intelligence databases;
- Adopt a tighter definition of “domestic extremism” and instruct police officers that peaceful protestors should not be categorized as domestic extremists;
- End the practice of containment or “kettling”;
- Ensure that law enforcement authorities which violate the rights to freedom of peaceful assembly are held personally and fully accountable for such violations by an independent and democratic oversight body, and by the courts of law; in this regard, command responsibility must be upheld;
- Law enforcement officers should wear identification badges at all times;
- Stop using pre-emptive measures targeted at peaceful protestors;
- Stop using stop-and-search powers in the context of peaceful protests;
- Stop imposing stringent bail conditions on peaceful protestors;
- Establish a protest ombudsman before whom protestors can challenge bail conditions;
- Stop enforcing private injunctions against peaceful protestors;
- Separate the protest liaison function from intelligence gathering;
- Always allow independent monitoring during peaceful protests and assemblies and ensure at all times the protection of those monitoring and reporting on violations and abuses in this context;
- Grant more powers to the Independent Police Complaints Commission, notably by allowing the Commission to report before Parliament, and increasing its resources; protestors should be able to bring complaints directly to the Commission; and a greater degree of diversity among the investigators should be achieved;

94. Private companies should not request private injunctions against peaceful protestors.

*Northern Ireland*

95. The Special Rapporteur calls on the competent authorities to:

- Ensure that the Parades Commission provides better and clearer reasons for its decisions, to enable the rationale for these to be understood, as well as making additional efforts at outreach and dialogue with the political classes;
- Ensure that in the Parade Commission’s procedures and guidance publications it is made clear that the primary responsibility for

maintaining peace during a parade lies with law enforcement officials and not parade organizers;

- Ensure that blatant and provocative violations of the Parade Commission's determinations are prosecuted;
- Ensure that PSNI actions are not only even-handed in terms of their management of law enforcement during parades and protests, but that they are seen to be even-handed;
- Stop using Attenuating Energy Projectiles (plastic bullets);
- Ensure that PSNIs devise and fully implement training and policies aimed at preventing discriminatory practice on ground of gender.

96. The Special Rapporteur calls for political resolution of the issues – such as parades, flags and emblems – that still make the enjoyment of freedom of peaceful assembly problematic in Northern Ireland.

97. The Special Rapporteur calls on civil society organizations to continue facilitating dialogue between communities.

#### *Scotland*

98. The Special Rapporteur calls on the competent authorities to:

- Amend the Police, Public Order and Criminal Justice (Scotland) Act 2006 with a view to reducing the notification period to a few days;
- Ensure that the exercise of the right to freedom of peaceful assembly is not subject to cost recovery measures
- Adopt a harmonized approach across local authorities to facilitating parades.

### **Right to freedom of association**

99. In relation to the right to freedom of association, the Special Rapporteur calls on the authorities to:

- Ensure that measures taken by the State or by third parties in the context of counter-terrorism meet international human rights standards, in particular the principle of non-discrimination;
- Amend labour laws to establish a right not to be blacklisted, and to provide redress for those who have been victims of this practice;
- Ensure that the law also protects the right to strike, including secondary strikes in conformity with international human rights law.