

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 41/12 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the proposed **Police, Crime, Sentencing and Courts Bill** (the Bill)¹ put forward by your Government in March 2021, specifically Part 3 of the Bill entitled "Public order and unauthorised encampments" (cl.54-cl.60).

On 9 March 2021, the Government submitted to the House of Commons the aforementioned Bill. The Bill is currently under review by the Parliamentary Committees. According to its authors, the Bill would make major changes to the way protests are policed in England and Wales.² In particular, the Bill provides for the following clauses:

Clauses 54 to 56 and 60 will amend police powers in the Public Order Act 1986. It will allow police to impose conditions on protests "that are noisy enough to cause "intimidation or harassment" or "serious unease, alarm or distress" to bystanders".

Clauses 57 and 58 will amend provisions in the Police Reform and Social Responsibility Act 2011 to expand the "controlled area" around Parliament where certain protest activities are prohibited. It would also add obstructing access to the Parliamentary Estate to the activities prohibited in the "controlled area".

Clause 59 would abolish the common law offence of public nuisance and replace it with a new statutory offence of intentionally or recklessly causing public nuisance, following recommendations made by the Law Commission in 2015.³

Furthermore, the Bill would increase penalties for any breach of its provisions.

General observations

We wish to express our concern that the aforementioned provisions may fall short of numerous provisions of the International Covenant on Civil in Political

¹ <https://bills.parliament.uk/bills/2839#timeline>

² <https://commonslibrary.parliament.uk/research-briefings/cbp-9158/>

³ <https://commonslibrary.parliament.uk/research-briefings/cbp-9158/>

Rights (ICCPR) to which the United Kingdom is a State party, in particular the right to freedom of expression (article 19) and the right to freedom of peaceful assembly (article 21).

Before sharing specific observations on this proposed legislation, we would like to emphasise that the rights to freedom of expression, peaceful assembly and association are human rights guaranteed to all. Under international law, these rights can be subjected to certain restrictions only. Such restrictions must be clearly established by law for a legitimate aim and be “necessary in a democratic society”. In this context, the Special Rapporteur on the rights to freedom of peaceful assembly and of association has previously clarified that “the word ‘necessity’ does not mean ‘absolutely necessary’ or ‘indispensable’, but neither does it have the flexibility of terms such as ‘useful’ or ‘convenient’: instead, the term means that there must be a ‘pressing social need’ for the interference”.⁴ When such a pressing social need arises, States have to ensure that any restrictive measures fall within the limit of what is acceptable in a “democratic society”. In that regard, longstanding jurisprudence asserts that democratic societies exist only where “pluralism, tolerance and broadmindedness” are in place.⁵ Hence, States cannot undermine the very existence of these attributes when restricting these fundamental rights. Furthermore, “where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights” (General comment No. 31 of the Human Rights Committee para. 6, 2004).

Objectives of the Bill

The Government has justified the introduction of the Bill by noting with concerns the financial impact some violent protests have had on the economy.⁶ It has also argued that the Bill “will improve the police’s ability to manage such protests, enabling them to dedicate their resources to keeping the public safe.”⁷

We understand the challenges posed by managing protests, especially those of a large scale; however, we are concerned that the Bill does not adequately take into account State authorities’ positive duty to respect, facilitate and protect peaceful protests.⁸ The Council of Europe’s Venice Commission and the OSCE-ODIHR affirmed that “the facilitation of assemblies is an inherent part of the role of law enforcement and needs to be undertaken by the state regardless of the nature, size or other circumstances surrounding an assembly.”⁹

Specific comments on certain provisions of the Bill

The Bill allows for the imposition of restrictions on peaceful assemblies or even single-person protests, inter alia, when the noise that they generate “may result in serious disruption to the activities of an organisation which are carried on in the vicinity” of the assembly or when it may cause “serious unease, alarm or distress”.

⁴ A/HRC/20/27

⁵ A/HRC/20/27

⁶ 6 HMICFRS, ‘Getting the balance right? An inspection of how effectively the police deal with protests’ (11 March 2021), p. 2, 23;

⁷ UK Government (Home Office), Policy Paper: Police, Crime, Sentencing and Courts Bill 2021: protest powers factsheet (16 April 2021).

⁸ UN Human Rights Committee, [General Comment No. 37](#), paras 8, 23, 24, 36 and 74; OSCE/ODIHR – Venice Commission, [Guidelines on Freedom of Peaceful Assembly](#) (3rd edition), para 22

⁹ OSCE/ODIHR – Venice Commission, [Guidelines on Freedom of Peaceful Assembly](#) (3rd edition), para 155

Demonstrations in a public place will normally cause some disruption to others. It is a well-established principle in international law that a degree of tolerance towards such disruptions is required from the public and the authorities. The European Court of Human Rights has repeatedly underlined that “[A]lthough a demonstration in a public place may cause some disruption to ordinary life, including disruption of traffic, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention (on freedom of peaceful assembly) is not to be deprived of its substance”¹⁰. The Human Rights Committee has also emphasized that “[p]eaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration” and that the dispersal of a peaceful disruptive assembly can only ever be justified if the disruption is both “serious and sustained.”¹¹

Furthermore, in relation to the threshold of “serious alarm or distress” set forth in the Bill,, we would like to recall that during his country visit to the United Kingdom in 2013, the Special Rapporteur on freedom of peaceful assembly and of association expressed concern about section 5 of the Act of the Public Order Act 1986 which punishes individuals who use “threatening or abusive words or behaviour or disorderly behaviour, or displays any writing, sign or other visible representation which is threatening, abusive, within the hearing or sight of a person likely to be caused harassment, *alarm or distress*” (emphasis added). In our view, such a broad definition may unduly capture and curtail direct action by peaceful protestors and hence may curtail freedom of peaceful assembly.¹²The Bill appears to expand the controlled areas in which activities such as protests are restricted and introduces a new prohibited activity – namely obstructing, by the use of any item or not – the passage of a vehicle into or out of the Parliament Estate in the adjoined controlled area.

Following his country visit to the United Kingdom, the Special Rapporteur on freedom of peaceful assembly and of association expressed his concern at place-specific restrictions – which are already existing under section 143 of the 2011 Act. In particular, he noted “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 [recommended] that the exercise of fundamental freedoms never be subject to previous authorization, but at most to a regime of notification.”¹³

The choice of the venue or a route of an assembly by the organizers is an integral part of the right to freedom of peaceful assembly. In many instances the location where an assembly takes place is an important message. For instance, public areas around iconic buildings are a logical place for to convey a message with regard to institutions housed in these buildings. The Special Rapporteur on freedom of peaceful assembly and of association has underlined that organizers have the right to demonstrate “within sight and sound” of their target audience, and that the authorities

¹⁰ ECtHR, *Disk and Kesk v. Turkey*, Judgment of 27 November 2012, para 29.

¹¹ UN Human Rights Committee, General Comment No. 37, paras 44 and 85

¹² A/HRC/23/39/Add.1, para. 16

¹³ A/HRC/23/39/Add.1, para. 14

have a duty to facilitate the assembly at this location.¹⁴

The organizers' preferred venue will not always be a convenient one from the point of view of the authorities or the public. However, it is our view that tolerance should be displayed towards the disruption inevitably caused by assemblies so that individuals can effectively exercise their rights to freedom of expression and freedom of peaceful assembly.

In addition, we note that road disruptions, road blocking and long-lasting sit-ins in public spaces are central to many of the world's social movements and peaceful protests. Roadways are a common location for peaceful protests "precisely because they have significant potential for disruption and thus for drawing attention to their demands."¹⁵ In the past, the Special Rapporteur on freedom of peaceful assembly and of association has expressed concern that restrictions to these protest venues have had negative impact on these movements, sometimes resulting in stigmas that depict peaceful protests as "riots" and "criminal acts". The Special Rapporteurs reiterate that peaceful protests are a legitimate use of public space and that a certain level of disruption to ordinary life, including disruption of traffic, must be tolerated. We emphasize that road blocking should not be subject to criminal penalties.¹⁶

We are further concerned that the increased penalties provided in the Bill appear to be disproportionate and likely to cause a chilling effect on participation in peaceful assemblies, with adverse effect on the realization of the rights to freedom of expression and freedom of peaceful assembly.¹⁷

We would like to stress that the exercise of the rights to expression and to peaceful assembly are crucial to ensure individuals can be active participants in tackling today's global challenges, including human rights, climate change and sustainable development. As such, peaceful protests organised by human rights, environmental and climate defenders should be seen as allies, as they helped governments to advance these ambitious goals, raise public awareness, and mobilize popular support for rights-based change.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned observations and concerns.
2. Please provide further information about the compliance of the proposed legislation with international human rights norms and standards detailed above.
3. Please explain if consultations with civil society organizations, activists, academia, and other stakeholders were held during the drafting of the above-mentioned proposed legislation.

¹⁴ A/HRC/23/39

¹⁵ A/74/349, para. 49.

¹⁶ A/74/349, para. 49.

¹⁷ UN Human Rights Committee, General Comment No. 37, para 36.

4. Please provide information about the fines and penalties included in the above-mentioned proposed legislation and their compatibility with the necessity and proportionality requirements, under articles 19 and 21 of the ICCPR.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While waiting for a reply, we would like to encourage the State to take all necessary steps to carry out a detailed review of the draft law and to consult with all relevant stakeholders, including civil society in order to ensure the final text is compatible with United Kingdom's international human rights obligations, in particular with the above mentioned Articles 19 and 21 of the ICCPR. We stand ready to provide your Excellency's Government with any technical advice it may require in this endeavour.

Please accept, Excellency, the assurances of our highest consideration.

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression