



UNITED NATIONS

Press Release

Statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the United Kingdom

LONDON, 23 January 2013 – From 14 to 23 January 2013, I carried out an official visit to the United Kingdom, 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. I visited London, Belfast and Edinburgh where I met senior officials, representatives of the legislature, human rights commissions and other independent monitoring institutions, and civil society. I would like to thank all the people I met for the candid, frank and very fruitful discussions we had.

Let me also thank the British Government for its invitation and for its exemplary cooperation prior to and throughout the mission. I am grateful, as well, to the Government for its continuous support to my 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.

This press statement, and the subsequent report which I will present to the Human Rights Council at its 23rd session in June, is presented in a spirit of constructive dialogue with a view to assisting the British Government 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.

I will be taking time to review and analyse the considerable amount of information I have received during this visit, and will follow up on further exchanges of information with the stakeholders I met. However, as customary with official missions, I will now present my main preliminary observations and a number of recommendations.

Importantly, I wish to recognize the significant positive developments - over the last 15 years or so - 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, that no matter how old a democracy, there is always space for continued improvements.

Freedom of peaceful assembly

England and Wales

Policing of peaceful demonstrations, protests and assemblies has undergone massive changes since the G20 summit in 2009. These changes are welcome, and the policing around the recent Olympic Games and the Royal Jubilee were very successful. Moreover, I note, with appreciation, the ruling Coalition's commitment to protecting the rights to non-violent protests.

I note that London is a magnet for protests, direct actions and demonstrations. In that regard, I must emphasize that my mandate covers only those assemblies that are non-violent.

In this connection, I am deeply concerned with the use of embedded undercover police officers in groups that are non-violent and which exercise their democratic rights to protest and take peaceful direct action. The case of Mark Kennedy and other undercover officers is shocking as the groups in question were not engaged in criminal activities. The duration of this infiltration, and the resultant trauma and suspicion it has caused, are unacceptable in a democracy. It is a clear violation of basic rights protected under the Human Rights Act, and more generally under international law, such as the right to privacy.

I welcome the review undertaken by Her Majesty's Inspectorate of Constabulary on this issue, and I note the statement of the police that lessons have been learnt. However, the matter goes beyond lessons for the police, and has left a trail of victims and survivors in its wake.

I therefore call on the authorities to undertake a judge-led public enquiry into the Mark Kennedy matter, and other related cases, with a view to giving voice to victims, especially women, who were deliberately deceived by their own government, and paving the way for reparations. These cases are as damaging as the "phone-hacking" matters which were the subject of a judge-led public inquiry, and it is crucial that similar practices by the state, in relation to groups which are simply implementing their civic duty to peacefully campaign for change, be subject to an independent investigation.

I am mindful that the police have been facing considerable challenges in policing assemblies and demonstrations, which sometimes have turned violent, and that police officers have paid a cost with casualties. Nevertheless, I am concerned that provisions in the legal framework, and ongoing detrimental police practices, have hindered the exercise of the right to freedom of peaceful assembly. While this right is guaranteed under article 11 of the Human Rights Act, it is governed by a series of laws aimed primarily at ensuring public order, most notably the Public Order Act 1986. Thus the focus is often ensuring on public order, rather than a human rights based approach that would facilitate assemblies.

Article 13 of the Public Order Act, which allows for the prohibition of marches, is also of concern, as exemplified by the recent imposition of a blanket ban on marches of 30 days in 3 boroughs in London to prevent the English Defence League, a xenophobic group, from

protesting. While I acknowledge that such a measure has only been used twice in 30 years, I firmly believe that it is intrinsically disproportionate and discriminatory as it affects all citizens wanting to exercise their right to freedom of peacefully assembly.

I am further concerned about the police practice of containment or 'kettling' which has been used in London in the past years. I take note of a number of decisions by British courts which ruled in favour of the practice, and which have recently been confirmed by the European Court of Human Rights.

Nevertheless, I believe that this practice is detrimental to the exercise of the right to freedom of peaceful assembly due to its indiscriminate and disproportionate nature. I heard, for instance, appalling stories of peaceful protestors, as well as innocent by-standers - such as tourists - held for long hours with no access to water or sanitary facilities. It also undeniably has a powerful chilling effect on the exercise of freedom of peaceful assembly, and I was informed of many people who refrained from exercising their right to freedom of peaceful assembly for fear of being kettled. Finally, it appears that kettling is used for intelligence gathering purposes, by compelling those kettled to disclose their name and address as they leave the kettle, increasing the chilling effect it has on potential protesters.

Linked to the intelligence gathering around kettling, I also heard concerns about the existence of numerous databases collated by the police from protests and assemblies, allegedly containing personal details about peaceful protestors through various overt and covert means. 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, this only exacerbates tension and mistrust and can be counter-productive in fostering human rights.

Many activists that I spoke to expressed fear of being held criminally responsible for offences committed by participants in the protests, which is of concern to me. Organizers should never be criminalized for such vicarious offences.

I am also troubled by the definition of "domestic extremism" as it is presently too broad, and heard real fears from peaceful protestors that they could easily be grouped in this category, along with real extremists. Indeed, some police officials, while ostensibly differentiating between extremist groups and others that use direct action, often conflate them, especially when the protest groups are horizontal.

On a positive note, I welcome the establishment and use of protest liaison police officers, in charge of negotiating with the organizers the smooth running of a peaceful demonstration. However, for this to function effectively, 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.

I also find particularly helpful the practice of inviting non-governmental organisations to monitor protests, and the policing around them, although I received conflicting information of monitors having been targeted by law enforcement authorities during some peaceful protests.

The use of pre-emptive measures - verbal warnings and arrests - by the authorities against individuals suspected of being likely to commit offences during protests is troubling. I am also dismayed about very strict police bail conditions which have been imposed on protestors who have been arrested, to deter them from further exercising their rights. Such conditions may be challenged before a court, but the process is costly and can be a strain to some, especially when legal aid is being cut as part of austerity measures. Similarly, the use of stop-and-search powers has reportedly been used on a number of occasions in the context of peaceful protests. Such measures should never be used against peaceful protestors.

Finally, another area of concern to me is the use by private companies of civil injunctions, under the Protection from Harassment Act 1997, to stop peaceful protests. Such injunctions are reportedly difficult to challenge. The issue of aggravated trespass, to curtail the right to freedom of peaceful assembly, is also very problematic, especially in the context of the increasing privatization of public space.

The United Kingdom, like much of the world, is going through some tough economic challenges that will undoubtedly cause dislocation and discontent. It is in such difficult times, with angry and frustrated citizens, that the respect for freedom of peaceful assembly must be at its highest. To quote Martin Luther King, "the ultimate measure of a man [country] is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy." That is the challenge for the United Kingdom in these times.

Northern Ireland

Northern Ireland is unique, and my visit was especially timely during the "flag protests." I was struck by the deeply rooted tensions between the protestants/unionists/loyalists and the catholics/nationalists/republicans. Absent the political resolution of the tensions and divisions in Northern Ireland, parades have become a prime location for these tensions and divisions, and all indications are that the forthcoming parading season will be a difficult one.

The Public Processions (Northern Ireland) Act 1998 regulates the holding of processions. A 28-day notification procedure for marches is in place, aimed at allowing both sides to enter into dialogue and ease tensions. In my thematic report presented last June to the United Nations Human Rights Council, I hold up as good practice a requirement to notify of 48 hours. Owing to the complexity and history of Northern Ireland, I came to the conclusion that it is a sensible approach, which however should be reviewed regularly. A late notification procedure is in place for marches that are not considered to be parades.

The Public Processions (Northern Ireland) Act 1998 further established the independent Parades Commission, whose mandate is, inter alia, to promote and facilitate mediation as a means of resolving disputes concerning public processions. It may impose restrictions on time and location, but cannot prohibit parades.

The need for an independent body such as the Parades Commission is undisputed. However, unionists today question the legitimacy of the Commission, viewing it as biased against them for imposing restrictions and limits to what they believe is their absolute freedom to march. Yet article 20 of the International Covenant on Civil and Political Rights does impose restrictions on rights. And this is especially poignant given the bloody history of Northern Ireland.

It is imperative that the political leaders of Northern Ireland re-commit themselves to the independent Parades Commission, ironing out differences as soon as possible. Ignoring the decisions of the Commission undermine it and increase tensions. On its part, the Commission should provide better and clearer reasons for its decisions so that their rationale can be understood, as well as make additional efforts at outreach and dialogue with the political classes. Moreover, the Public Prosecution Service needs to step in and prosecute blatant and provocative violations of the Commission's decisions to foster public confidence on all sides.

I was impressed by the tremendous progress - in a relatively short time - that has been made with regards to policing of protests in Northern Ireland. The police have adopted a human rights based approach to policing of protests, which should be replicated in the whole of the United Kingdom. The police service of Northern Ireland is one of the most scrutinized police forces in the world, and the work of the Police Ombudsman must be noted with appreciation. However, the police must ensure even-handedness in dealing with sectarian issues, and especially avoid gender-based abuse.

The current 'flag protests' have significantly increased tensions between the communities, and I urge leaders from both sides to dialogue genuinely. Where such dialogue has taken place, there has been progress as Derry Londonderry exemplifies, and I commend the work of civil society organizations working on inter-community relations and human rights.

Scotland

There are similarities in the parading tradition between Scotland and Northern Ireland albeit not to the same extent with respect to the number of parades or the intensity of the tensions around them. There are over a thousand parades held in Scotland annually and the vast majority of these are by the Orange Order. I was pleased to note that these parades are largely peaceful and well facilitated by the police. The increasing use of dialogue and negotiation between the local authorities and police on the one hand and organisers of parades and protests on the other in order to ensure that these events take place with minimal difficulty is commendable.

All the same, a few issues are of concern, some of which I have already dealt with in relation to England and Wales and Northern Ireland. These include the application of the problematic concept of 'domestic extremism' to protest groups, and the gathering and use of intelligence.

Unlike the situation in Northern Ireland, where a 28-day notification procedure may be necessary because of the contentious nature of some parades, I found little justification for a

similar period of notification in Scotland. While the local authority has the discretion to waive the notification period, I would urge that the legal framework be amended to reflect the best practice of 48 hours cited in my thematic report.

I was made aware that cost recovery measures are imposed on parade organisers by some local authorities (in particular the Glasgow local authority), a situation that I find troubling. Cost recovery measures are sanctioned by the Scottish Ministers through their 'Guidance for Scottish Local Authorities' on marches and parades. I understand that marches and parades of the magnitude sometimes held in Glasgow require a large amount of resources to ensure public order and safety. Nevertheless, I am of the firm conviction that cost recovery measures place an unjustifiable burden on parade organisers and have the effect of unduly restricting the exercise of peaceful assembly. As I noted in my thematic report, 'organisers should not incur any financial charges for the provision of public services during an assembly'.

There are increasing numbers of counter-demonstrations in Scotland especially against the Scottish Defence League. It is necessary during such protests and counter-protests that the groups are kept apart and diffused as quickly as possible without kettling.

It emerged during discussions that local authorities have rather wide discretion in the management of processions, a situation that results in unequal application of the legal framework in Scotland. I was also informed that the police forces in Scotland are in the process of merging into a single Scottish police service, a development that presents the opportunity for a unified approach to facilitating processions and assemblies throughout Scotland. I would recommend that both the local authorities and the police service systematically adopt as soon as possible a human rights based approach and good practices from other parts of the country - such as Northern Ireland - as the guiding framework for facilitating and managing assemblies.

Freedom of association

Now turning to freedom of association, also guaranteed under article 11 of the Human Rights Act. I am impressed by the number of charities operating in the country, and the vibrancy of civil society organisations at large. Let me say that freedom of association is largely enjoyed in the United Kingdom. However, a number of issues of concern were brought to my attention.

In the context of the fight against terrorism, a number of organisations have been proscribed while there was reportedly no proof that these organisations had been active in terrorist activities, as stressed by the Independent Reviewer for Terrorist Legislation. Such measures have had a deterrent impact on communities (such as Tamil, Kurdish or Baloch) which have on occasion been afraid of expressing themselves publicly.

Furthermore, Muslim charities and those operating in countries deemed sensitive have faced difficulties in relation to banks through which they have to raise and spend funds. The banks

have reportedly closed accounts or delay payments of local staff members in fear of civil litigation in the UK and regulatory sanctions in other countries.

With regard to trade unions, two main issues of concern were brought to my attention. First, I found undue constraints on the right to strike as secondary picketing (or solidarity strikes) have not been allowed since 1982. This issue has been criticized by the International Labour Organization on repeated occasions. It is time to repeal this law and bring the UK into conformity with human rights law. Secondly, I was appalled to hear about the existence of a blacklist of union members in the construction industry, with no sanctions allegedly taken against those who benefitted from the list. It is crucial that strong actions be taken against the making and using of such lists as a deterrence.

To conclude, once again, I wish to state that the above preliminary conclusions and recommendations are shared as a friend to the United Kingdom. I am confident that the Government will see these as an opportunity to consolidate the improvements made over the years in relation to the realization of the rights to freedom of peaceful assembly and of association in the country. This would no doubt have a deep resonance at the international level, and influence other countries positively.

I thank you for your attention.