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including the right to development**

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association: comments by the State United Kingdom of Great Britain and Northern Ireland**

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Special Rapporteur on rights to freedom of peaceful assembly and of association on his mission to the United Kingdom

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Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association: comments by the State United Kingdom of Great Britain and Northern Ireland

Response to recommendations

1. The UK would like to thank the UN Special Rapporteur (SR) on the rights to freedom of peaceful assembly and of association for the opportunity to comment on his report on his follow up mission to the UK in 2016.
2. We are pleased to see that the SR notes the efforts that have been made to address recommendations contained in his report following his previous visit. This includes his welcoming the launch of the Undercover Policing Inquiry led by Lord Justice Pitchford. We are also pleased with the positive comments the SR has made on areas of good practice which include matters relating to New Grant Standards and the introduction of a statutory code of Ethics for the policing profession of England and Wales. In responding to the report, we would like to reiterate our continued support for the SR's mandate which was renewed in June 2016 and thank the SR for his acknowledgement that the British Government takes its role as one of the global leaders in human rights seriously.
3. We welcome the consideration the SR has given in his recommendations to the protection of freedoms of peaceful assembly and associations in the UK. We will give due consideration to the SR's recommendations.
4. The UK Government continues to make every effort to uphold and advance human rights and we are confident that current legislation in place meets international standards. The police have operational independence from the Government when planning for a protest event. They work within a legal framework, to facilitate peaceful protest by providing a lawful and proportionate policing response, which balances the needs and rights of protesters to exercise their views with those affected by the protest. The Independent Police Complaints Commission (IPCC) and Her Majesty's Inspectorate of Constabulary (HMIC) provide scrutiny and oversight of police forces' conduct independent from Government involvement. Individuals also have the option to challenge police decisions through the court system.
5. Turning to the report, we would like to make the following comments:

Prevent strategy

6. Para 7: The SR has quoted from the Government's Prevent duty guidance. Prevent is fundamentally about safeguarding and supporting vulnerable individuals to stop them becoming terrorists or supporting terrorism. It is concerned with challenging extremist ideas where they are used to legitimise terrorism and are shared by terrorist groups. The text quoted out of context does not accurately describe the individuals and groups that Prevent focuses on.
7. Para 9: The SR comments on the duty as being imposed on certain categories of public officials including teachers. We would like to clarify that the Prevent duty requires governing bodies to 'have due regard to the need to prevent people from being drawn into terrorism'. The duty is not on individual teachers. In the case of the 17-year old student referenced by the SR, the school involved has specifically and publicly denied the claims that the student was referred to Prevent because he was wearing a badge supporting Palestine.

8. Para 10: The Prevent Duty is supported with guidance for each sector and a dedicated package of training. The Department for Education's recent teachers' omnibus survey shows that 83 per cent of school leaders are confident in how they should implement the Prevent Duty. Over three-quarters of a million frontline staff now understand the radicalisation process and know what to do if they have concerns. The Prevent duty leaves it – quite properly - to the specified authorities to decide on a case-by-case basis what action is appropriate in order to demonstrate they have had due regard to the need to prevent people being drawn into terrorism.

9. We do not agree with the assessment that this amounts to excessive discretion which offends, or risks offending, the rule of law. Specified authorities subject to the Prevent duty are also bound, in the exercise of their public functions, to act in accordance with the Human Rights Act 1998 and to comply with equality legislation. These safeguards, coupled with the fact that the Prevent duty is simply a “due regard” duty, mean that the statutory framework is designed to mitigate against the possibility of arbitrary or discriminatory interference.

10. Para 11: The SR has raised concerns that the guidance lists a set of indicators of vulnerability and risk which are overly broad. These factors have been drawn from extensive research into terrorist offenders and have been validated in peer-reviewed journals.

11. Para 12: Prevent does not draw an automatic link between extremism and terrorism. A number of Government publications confirm this including our Counter Extremism Strategy published in October 2015.

12. Para 14: The SR suggests that the Prevent strategy may have the opposite effect to that intended and be promoting terrorism, rather than countering it. Statistics contained in the 2015 CONTEST report to Parliament show the positive influence of Prevent with over 1000 people supported through Channel and over 150 journeys to Syria prevented. Over 75,000 people have been engaged through Prevent community projects or by Prevent coordinators in 2015.

Counter-Extremism and Safeguarding Bill

13. Paras 15-18: We would like to clarify the position in respect to an Extremism Bill. In 2015, the Government announced the introduction of an Extremism Bill. However, such a Bill was not introduced and there was no Counter Extremism Bill included in the most recent Queen's speech.

Undue restrictions on associations' use of funds

14. Paras 18-23: We welcome the SR'S recognition of the role the United Kingdom played in 2016 in updating Recommendation 8 of the Financial Action Task Force (FATF) on non-profit organisations. It is a commercial decision for banks regarding who they accept or decline as customers to provide services to. The Commission cannot intervene in an individual decision of a bank to exit its relationship with a customer. The commission's regulatory role is to ensure the trustees take steps to secure the safety of any funds put at risk as a result.

15. That said, the Commission has been clear to all, including charities and the financial sector that charities need access to regulated financial services, and specifically bank accounts, to safely store and move their funds both in the UK and internationally. There is a risk that, in the event that a charity is unable to secure banking facilities, charitable funds may be moved off-shore, held in personal bank accounts or held in cash; as well as creating practical difficulties and increasing costs for the charities, this will make it harder for them to evidence the flow of funds to meet their charity law duties.

16. The Commission has lobbied internationally to ensure that the charity sector as a whole is not regarded or treated as high risk. The Commission will continue to encourage greater dialogue on this issue between the charity sector, banks and financial sector and relevant government departments. We have for example raised concerns about the impact on charities resulting from de-risking programmes, decisions by banks to withdraw services and the need to ensure that payments for legitimate humanitarian aid projects overseas, particularly in conflict zones can continue and are not unduly impacted.

Investigatory Powers Act

17. Para 25: We would like to highlight the open and consultative approach the Government adopted throughout the passage of the I-P-Bill legislation, and the extensive engagement by Home Office ministers and officials with interested parties such as civil liberties groups, charities and victims groups, legal associations, media associations, communications industry, academics and technical experts during the Bill's Parliamentary passage. This engagement led to the Government tabling and accepting amendments to the Bill and to amendments being made to the draft codes of practice which were published alongside the draft Bill in March 2016, and revised for public consultation, which concluded in April 2017.

18. Paras 26 & 28: Over 1700 amendments to the Bill were tabled and debated from 1 March 2016 (when a revised Bill was introduced in the House of Commons) and 16 November, when the Bill completed its Parliamentary passage. The Government tabled or accepted amendments in both Houses of Parliament in order to improve transparency, provide greater clarity, and strengthen privacy protections. These included enhanced protections for trade unions and journalistic and legally privileged material, and the introduction of the requirement for data retention notices to be subject to the 'double-lock' authorisation procedure, requiring a Judicial Commissioner to approve the Secretary of State's decision to issue a notice before the notice can be issued. In all instances, warrants and authorisations under the Act may only be given where it is both necessary and proportionate, and regard must be had to what is sought to be achieved could reasonably be obtained through other less intrusive means.

19. Para 27: The SR raises concerns that the definition of serious crime is overly broad, and thematic warrants consequently fail to target specific individuals on the basis of reasonable suspicion. . A thematic warrant may be appropriate where the proposed activity relates to more than one person or organisation involved in a particular activity, equipment being used for a particular activity, or where more than one person or organisation is subject to the same investigation. As with other provisions in the Act, this activity can only be authorised where it is both necessary and proportionate, and these warrants are subject to the 'double-lock' authorisation procedure. Greater detail on thematic warrants is provided in the draft interception and equipment interference codes of practice, public consultation on which has recently concluded. The Special Rapporteur also queries the independence of the IPC as an oversight mechanism, given the Investigatory Powers Commissioner (IPC) and Judicial Commissioners are appointed by the Prime Minister. We have previously noted to the SR that we do not believe that the appointment process will compromise the independence and impartiality of the Judicial Commissioners. The Act provides that neither the IPC nor a Judicial Commissioner can be appointed as such unless they have been recommended by the Lord Chancellor and the Heads of the Judiciary in England and Wales, Northern Ireland, and Scotland (and, in the case of Judicial Commissioners, the IPC himself). The Prime Minister must also consult the Scottish Ministers before making such appointments.

The Lobbying Act

20. Para 29: The SR is concerned with the regulation of third party campaigners contained in the Lobbying Act 2014. This regulation was not new and the regime applies to any organisation which is not a political party, including campaigning organisations and companies. The regime was established by the Political Parties, Elections and Referendums Act 2000. It is also worth noting that longstanding rules under charity law already prohibit charities from engaging in any party-political campaigning or activity. This is particularly important in a pre-election period.

21. Para 34: The Lobbying Act requires consultant lobbyists to register in order to carry out their activities. This is to increase transparency about who consultant lobbyists are representing rather than restrict their activities. The statutory provisions are complemented by non-statutory requirements for information about meetings between external organisations and Ministers to be disclosed on a regular basis. Both Part 1 of the Act and the disclosure requirements apply equally to all sectors.

The New Grants Standards

22. We are pleased that the SR welcomes the overall clarity provided by the New Grants Standards issued by the Cabinet Office in December 2016, and that civil society was consulted in the framing of these standards.

Guidance around the European Union referendum

23. Para 39: The Charity Commission produced guidance for charities when the idea of an EU referendum was proposed and first prepared the guidance to explain to charity trustees the thresholds for justifying charity involvement in the referendum debate, and to explain what they expected trustees to consider in their decision-making. The Commission wanted to remind charities that seeking to influence the outcome of the referendum, like any other political activity, had to be a means to support their charity's purposes. The short interval between the confirmation of the date of the referendum and the vote itself meant it was not possible to consult on a draft of the guidance. The Commission did discuss the position it would take informally with sector bodies and lawyers. It is its usual practice to consult on draft guidance to ensure the language is clear.

24. Para 40: The Commission does not agree with the assessment that guidance issued was incorrect in law or that it was at variance with the principles set out in its wider guidance on charities and political activity and campaigning. Subsequent to publication the Commission was asked to clarify some points in the guidance. The commission considered these comments carefully and made some changes to the wording of the guidance for clarification.

25. Para 41: The Commission issued this guidance under embargo to a wide selection of media outlets and sector bodies at 12 noon, and subsequently published it at midnight. It is common practice to issue publications under embargo in this way.

Trade Unionism

26. Para 44: We are pleased that the SR welcomes consultation with various stakeholders. Consideration of their views resulted in a number of proposals not being included in the Bill. In addition, the Government has consulted on plans to allow employers to hire agency staff to replace some striking workers and the Government is considering the responses.

27. Para 46: We would like to highlight that parts of the Act also introduce new picketing requirements which are derived from the Code of Practice on Picketing which has been used by trade unions since 1992.

Undercover policing

28. We are pleased that the SR welcomes the Undercover Policing Inquiry led by Lord Justice Pitchford and note his comments. The Undercover Policing Inquiry is ongoing and its ways for working, for example the approach to anonymity applications, are entirely a matter for the Chair of the Inquiry.

29. The use of covert human intelligence sources by police forces, and the intelligence derived from this use, plays an important role in the prevention and detection of crime, and is subject to strict authorisation controls and oversight through the Office of Surveillance Commissioners, as detailed in the Covert Human Intelligence Sources Code of Practice. We welcome the Special Rapporteur's observation on the need for consistent legislation, regulation and policies on undercover policing, and we highlight the requirement, as of 1 January 2014, for law enforcement agencies to obtain prior approval from a Surveillance Commissioner where deployment of an undercover officer will exceed 12 months. As with any authorisation for the deployment of undercover officers, the authorising officer must be satisfied that the activity sought is both necessary and proportionate, and must ensure they comply with the Covert Human Intelligence Sources Code of Practice.

Restrictions on organisation of protests

30. Paras 56-59: The SR makes reference to an application process to the Greater London Authority (GLA) for protests to be held at Parliament Square and Trafalgar Square. The application process referred to by the SR does not apply to protests by individuals acting independently. It applies to organised events on a larger scale. Its primary purpose is the collection and assessment of practical information about planned events, to enable the GLA to exercise its discretion to make proportionate decisions about the use of the squares, taking account of the need to protect the rights and freedoms of the wider public alongside the rights of protesters. Some protest organisers object to the application process and opt not to submit an application. Whilst this can cause significant practical difficulties, in this situation the GLA will exercise its discretion in deciding how to respond and in some cases, depending on the circumstances, the protest will be permitted to continue notwithstanding the lack of prior permission or compliance with a particular requirement. The high number of protests that take place in the squares routinely suggest that the specific requirements identified by the SR do not present a strong deterrent.

31. Para 60: The SR makes reference that the Metropolitan Police had previously imposed costs relating to protests on event organisers. The Metropolitan Police Service neither charges nor has charged organisers for the policing of protests.

Use of force and harassment

32. The SR highlighted concerns raised to him about Greater Manchester Police (GMP) excessive use of force at the Barton Moss protests between November 2013 and April 2014. Greater Manchester Police challenge these allegations as they did throughout the period of protest and as a result of subsequent similar allegations.

33. GMP report that this was a complex and challenging policing operation in which they tried at all times to get the balance right between rights to protest and right to maintain lawful business, taking into account the ECHR considerations and the positive duty imposed on authorities to facilitate protest.

34. An independent review was conducted by the Protest Panel established by the Greater Manchester Police and Crime Commissioner which refuted a number of allegations made. The report made a number of recommendations however, which have been acted upon in relation to planning, engagement and communication with protest groups.

35. No protestor has made any formal allegations of sexual assault carried out by GMP officer's by any protestor despite calls for anyone who believes they have been subjected to this to come forward.

36. We welcome the SR's acknowledgement of the introduction of the Code of Ethics as a statutory code of practice for the policing profession of England and Wales. The HMIC's 2016 Legitimacy Inspection investigated how well forces had adopted the Code of Ethics. This showed that, while some disparities between force values and the Code of Ethics remain, most forces have taken effective action to improve workforce understanding of the Code, including the importance of treating people with fairness and respect.

37. Para 65: The SR reiterates his concerns over the police's use of containment as a measure to manage possible disorder at protests. As the SR noted in his previous report the use of containment is supported by the UK Courts and the European Court of Human Rights. Police guidance sets out that containment is a tactic of final resort and, if used, it should be the least intrusive and most effective means to protect the public from violence. The Government continues to support the targeted and proportionate use of containment with every effort made to minimise the impact on those protesting peacefully.

Resort to mass arrests, stop-and-search powers and dispersal powers

38. Para 67: The SR raised concerns over the police's use of stop and search Powers. All 43 Home Office forces, with the addition of the British Transport Police, voluntarily adopted the Best Use of Stop and Search Scheme following its launch in 2014. One of the features of this Scheme is to reduce 'no suspicion' stop and searches under Section 60 of the Criminal Justice and Public Order Act 1994. This power can be authorised for a period of time in a particular location where there has been, or there may be, incidents involving serious acts of violence or persons are carrying dangerous instruments or offensive weapons without good reason.

39. Para 68: The SR raises the issue of bail conditions placed on protesters. The Government introduced legislation on pre-charge bail in 2016, which was enacted in 2017, creating a presumption in all cases (not just those involving protest) that the police should release arrested persons without bail, and can only impose bail where it is both necessary and proportionate. This legislation came into force on 3 April 2017 and should reduce both the number of people on bail and the length of that bail, although figures are not yet available to show the scale of the change.

40. Para 69: The SR raises concerns over the police's use of dispersal powers contained in section 35 of the Anti-social Behaviour, Crime and Policing Act 2014. The use of dispersal powers is a preventative measure that can be used by the police in a range of situations for the purpose of removing or reducing the likelihood of members of the public being harassed, alarmed or distressed or the occurrence in the locality of crime or disorder. There are clear tests for the issuing officer to consider before issuing a dispersal notice, which are set out in legislation and accompanying statutory police guidance. The officer authorising the use of dispersal powers in a particular area must also not act incompatibly with Articles 10 and 11 of the European Convention on Human Rights that provide for the rights for lawful freedom of expression and freedom of assembly.

41. Para 70: The SR raised the matter over the availability of Legal Aid. Any individual who is arrested and taken to a police station will be eligible for free legal advice. Legal Aid at a police station is non means tested and if the individual is also going to be interviewed,

non-merits tested too. The right to free legal advice will be confirmed by the Police at the point of arrest, who will arrange for access to a defence solicitor via the Defence Solicitor Call Centre, should the detainee wish one. Posters are on display in all police stations as to the availability of Legal Aid.

42. If the detainee is subsequently charged with an offence or has to appear in court any further access to Legal Aid will be means tested and will also need to pass the Interests of Justice Test. Should the detainee not have a solicitor when appearing at court then the Court Duty Solicitor can be consulted for advice and give further guidance and assistance in any application for Legal Aid.

Protest Liaison officers (PLO)

43. The role of PLOs deployed to provide a link between the police and demonstrators. Their primary function is that of liaison and they are not deployed to gather intelligence. Police commanders should have clear command protocols and lines of communication to support the deployment in order to avoid conflict with the PLO role, they should also consider the availability of other suitable resources to deliver directed tactics, including intelligence gathering functions.

44. In the course of their role, PLOs may, by default, gather information that once fed back to commanders may have an effect on the wider policing operation. To maintain relationships and avoid the danger of PLOs being perceived as acting covertly, careful consideration must be given to how this information is used. It should be recognised that there may be times where information gathered leads to concerns over possible Article 2 issues or those of serious threat and risk. The use of this information may give the appearance that PLOs are being used as intelligence gatherers.

Accountability for police violations

45. We are pleased that the SR welcomes the notable increase in the resources of the IPCC.

46. The SR is concerned that the IPCC reports to the Home Office and not directly to Parliament. The UK Government has considered this question recently. In 2015, the UK Government appointed an independent reviewer – Sheila Drew Smith OBE of the Committee on Standards in Public Life – to review the IPCC’s proposals and the IPCC’s governance arrangements. The Drew Smith report (published on the UK’s gov.uk website) considered the IPCC’s own proposal that it should report directly to Parliament.

47. Sheila Drew Smith noted that the “relationship between the IPCC and the Home Office is set out in a Framework Document which makes clear that the IPCC “is operationally independent of the police, the government and complainants”....none of those I consulted in this review raised any doubt about the operational independence from the Home Office of the decision-making by the IPCC.... more critical to a body’s independence, and the public perception of independence, is how it behaves and delivers its functions – not to whom, in a technical sense, it formally reports.”

48. Her report also noted that IPCC is an integral part of the overall policing system. She concluded that the effective delivery of the IPCC’s core functions (maintaining confidence in the wider complaints system) is best supported by the IPCC remaining within the broad cluster of policing bodies sponsored by the Home Office. Reporting directly to Parliament would not necessarily secure a greater perception of independence.

49. As the report also noted, the vast majority of ‘arms’ length bodies” and a number of Ombudsman schemes are already directly accountable to a lead Government department. These include the Housing Ombudsman (reporting to the Department for Communities and

Local Government) and the Legal Services Ombudsman (reporting to the Ministry of Justice). Similarly, the Police Ombudsman for Northern Ireland (PONI), on which the IPCC has based much of its governance proposal, has a strong reputation for independence but is actually overseen by the Department for Justice (Northern Ireland). Parliamentary committees deal with a wide range and a high volume of business. A number of those interviewed indicated that it was doubtful whether a Committee would be able to provide the same degree of consistent oversight as the Home Office is able to through a dedicated sponsorship function.

50. Sheila Drew Smith's report concluded that the IPCC remaining within the ambit of the Home Office would also help to ensure stronger alignment and working relationships with PCCs who, going forward, can be expected to play an increasingly important role in the overall system of police integrity and complaints.

51. The UK Government accepted most of her recommendations and findings including this one. It then took forward a number of her recommendations via the Policing and Crime Act 2017. Various measures in the 2017 Act are intended to fundamentally reform the governance of the IPCC, which is to be renamed "The Independent Office for Police Conduct" (IOPC). The "Commission" model is to be replaced by a single executive head, the Director General, with corporate governance provided by a Board with a majority of non-executives. This is aimed at streamlining decision-making, improve accountability and deliver the objective scrutiny. Under the 2017 Act, the IPCC/IOPC is also getting new powers such as the power to initiate its own investigations; clear powers to reopen closed investigations and suggest remedies. Additional provisions in the 2017 Act are intended to increase the IPCC's independence from the police. The Government is implementing the reforms to the IPCC, alongside other policing integrity measures, in phases. This phased implementation is due to be completed in 2018.

Conclusion

53. In conclusion, we would like to thank Mr Kiai for his visit and his report and we would like to congratulate the new Special Rapporteur, Ms Ciampi, on her appointment and to assure her of the United Kingdom's continuous support for her mandate.
