Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of human rights in the context of climate change; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the right to privacy

Ref.: OL GBR 16/2022
(Please use this reference in your reply)

22 December 2022

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; Special Rapporteur on the promotion and protection of human rights in the context of climate change; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 50/17, 48/14, 46/7, 43/4 and 46/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the Public Order Bill of the United Kingdom (hereafter, the "Bill") which could result in undue and grave restrictions on the exercise of the rights to freedom of peaceful assembly and of association, as well as of expression. This communication follows a previous communication sent to your Excellency's Government on 25 May 2021 (GBR 7/2021), in which other concerns relating to the freedom of peaceful assembly and of association, as well as of expression were raised in relation to the Police, Crime, Sentencing, and Courts Bill that has since become law in April 2022.

Your Excellency' Government previously attempted to introduce several of the proposed offences in the Public Order Bill in the Police, Crime, Sentencing and Courts Act 2022 (the "PCSC Act"), additions that the House of Lords had previously rejected in January 2022 during its consideration of that section of the Police, Crime, Sentencing and Courts Bill, before it received Royal Assent in April 2022. The proposed offences had been rejected on the basis that they were "draconian and anti-democratic". Some of these offences are now again under consideration in the Public Order Bill and would provide for additional and enhanced restrictions measures on the rights to freedom of peaceful assembly and of expression.

Introduced to the House of Commons on 11 May 2022, the Public Order Bill is currently before the House of Lords.

Applicable Human Rights Obligations

We wish to express our concerns that the certain proposed provisions in the Public Order Bill may fall short of numerous provisions of the International Covenant on Civil in Political Rights (ICCPR), ratified by the United Kingdom on 20 May 1976, in particular the right to freedom of expression (article 19) and the right to freedom of peaceful assembly (article 21).

Before providing specific observations on these proposed provisions, we would like to emphasise that the rights to freedom of peaceful assembly and association, as well as of expression, are human rights guaranteed to all. Under international law, these rights can be subjected to certain restrictions as narrowly defined by the International Covenant on Civil and Political Rights. Such restrictions must be clearly established by law for a legitimate aim and be "necessary in a democratic society" and proportionate to the achievement of the legitimate aim. 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" in the enjoyment of these rights.[1] 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.[2] 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).

Further, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, arbitrary and summary executions have emphasized that "no person should be held criminally, civilly or administratively liable for the mere act of organizing or participating in a peaceful protest" (A/HRC/31/66, 2016, para. 27).

General observations

We would like to express our grave concerns that if not further amended, the Bill could seriously curtail the legitimate exercise of the rights to freedom of peaceful assembly and association (see clauses 1, 6, and 7, inter alia), the right to privacy (see clauses 2, 5 and 21), the principle of proportionality (see clauses 3, 4, 5, 6, 7 and 13), and the right to freedom of expression (see clauses 1, 6, and 7, inter alia).

Clauses 1 and 2

Clauses 1 would introduce a new offence for "locking on" to other people, objects, or buildings. Clause 1 would render it illegal for activists to lock or bind themselves to other people, objects, or buildings, under penalty of up to 51 weeks in prison and a fine.

Clause 1 defines "locking on" as an offence when a person intentionally attaches (i) themselves to another person, to an object, or to land, (ii) a person to another, to an object, or to land, or (iii) an object to another object or to land.

1 A/HRC/20/27
2 A/HRC/20/27

Under the proposals, individuals commit the offence of "locking on" if:

1) They intentionally attached themselves, someone else or an "object" to another person, "object" or land

2) That act causes, or is capable of causing, serious disruption to more than one person or an organisation, in a place that is not a dwelling;

3) The individual either intends that act to have the consequences under 2) or is reckless as to whether the action will have such a consequence.

Clause 2 would introduce the offence of carrying an object in a place other than a dwelling with the intention that it may be used in the course of or in connection with the offence of "locking on", which would be subject to a fine on summary conviction.

Clauses 3, 4 and 5

Clauses 3, 4, and 5 would establish the new offences of causing serious disruption by tunnelling, causing serious disruption by being in a tunnel, and being equipped for tunnelling, respectively. The offences of causing serious disruption by tunnelling and causing serious disruption by being in a tunnel would be subject to 3 years in prison or a fine, while being equipped for tunnelling would be subject to 51 weeks in prison or a fine.

Under section 3(1) or 4(1), a person commits an offence related to tunnelling if they have an object with them in a place other than a dwelling, with the intention that it may be used in the course of or in connection with the commission by any person of an offence.

Individuals would further commit the offence of causing serious disruption by tunnelling where:

1) They create, or participate in the creation of, a "tunnel",

2) The creation or existence of the tunnel causes, or is capable of causing, serious disruption to two or more individuals, or an organisation, in a place other than a dwelling;

3) They intend or are reckless as to whether the creation or existence of the tunnel will cause serious disruption.

Any individual being present in a tunnel where their presence causes, or is capable of causing, serious disruption to two or more individuals or an organisation, would also commit the offence of causing serious disruption.

Clauses 6 and 7

The Bill would further introduce prohibitions of actions that obstruct major transport works or "interfere with use or operation" of "key national infrastructure" (e.g., airports, roads, railways, harbours, oil and gas infrastructure, onshore electricity generation production infrastructure, or newspaper printing infrastructure). Both

offences would be subject to fines, 51 weeks or 12 months in prison, respectively, or both.

Clause 7(7) would allow the Secretary of State to vary, by way of statutory instrument, the types of infrastructure deemed "key".

Clauses 10 to 14

Additionally, clauses 10 and 11 of the revised provisions of the Bill would expand the police's stop and search powers, lowering the threshold of reasonable belief in certain cases to search people and vehicles for items in connection with the offences prohibited by the Bill.

Clause 10 would amend section 1 of the Police and Criminal Evidence Act 1984 to expand the circumstances under which an officer could stop and search an individual to encompass "if they have reasonable grounds for suspecting that they will find an article made, adapted or intended for use in the course of or in connection with" the offences of wilful obstruction of a highway, intentionally or recklessly causing a public nuisance, locking-on, the obstruction of major transport works, interference with use or operation of key national infrastructure, causing serious disruption by creating a tunnel, and causing serious disruption by being present in a tunnel. Any prohibited items discovered on an individual stopped may be seized.

Where an officer reasonably believes that the abovementioned offences will take place in any locality within the officer's policing area and they have requested authorisation for such powers to be used, clause 11 would provide for a similar power to stop and search, albeit without suspicion, "anywhere within a specified locality", as long as it is "for a specified period not exceeding 24 hours" (subsection (3)). The officer may seize any prohibited items found on an individual stopped.

Moreover, clauses 11, 12, and 13 would provide the way in which an individual can be stopped and search without suspicion (e.g., need for written authorisation and entitlement of the person stopped to receive a written statement of the search), and clause 14 would create an offence of obstructing such a search.

Clauses 19, 20, 21 and 27

Clause 19 and 20 of the Bill would also provide for "Serious Disruption Prevention Orders", or "Protest Banning Orders", upon conviction of one of the aforementioned offences or without such a conviction, respectively. Such Protest Banning Orders could be imposed on individuals who have participated in, or contributed to another individual participating in, over one protest within a five-year period, whether or not that individual has ever been convicted of an offence.

Clause 21 stipulates that "Serious Disruption Prevention Orders" could impose wide-ranging and intrusive requirements on their recipients, notably prohibiting certain individuals from exercising their fundamental rights to freedom of peaceful assembly and of association and to freedom of expression. In particular, such orders could be used to prohibit people from being in or entering a particular place or area at any time or during specific days and times, being with other specific individuals, participating in certain activities, carrying certain articles with them, and using the internet to facilitate or encourage other people to commit a protest-related offence,

protest-related breach of an injunction, or carry out activities that result in, or are likely to result in, serious disruption to two or more individuals or to an organisation.

While "Serious Disruption Prevention Orders" are acquired through a civil process, Clause 27 provides that individuals who breach the conditions they impose would be subject to a prison sentence of up to 51 weeks, a fine, or both.

Specific comments on certain provisions of the Bill

Restrictions on the rights to freedom of peaceful assembly and of association

We are gravely concerned that the Bill would seriously infringe on a number of your Excellency's Government's international human rights law obligations, and particularly the rights to freedom of peaceful assembly and to freedom of expression.

Under international human rights laws and standards, an "assembly", is an intentional and temporary gathering in a private or public space for a specific purpose, and can take the form of demonstrations, meetings, strikes, processions, rallies or sit-ins with the purpose of voicing grievances and aspirations or facilitating celebrations.[3] This right should not be interpreted restrictively as underlined by the European Court of Human Rights.[4]

In the Bill, the offence of "locking on" would be defined in an overly broad and vague manner. It would appear to encompass two pedestrians locking arms down a busy street, criminalizing any form of "significant disruption" they could cause other pedestrians walking the opposite way (clause 1).

In the same vein, although the meaning of "serious disruption" is central to the offence of "locking on" and the other proposed offences in the Bill, the term "serious disruption" is not defined in the Bill, and its meaning remains vague and uncertain. In addition, there is no provision for the term to be defined by regulations, as is the case with respect to term's use in the PCSC Act.

Additionally, the offence may also be considered as committed in cases where an individual attaches an "object" to a person, to another "object" or to land. Such ambiguity in the wording of the incriminating actions would allow for a broad interpretation. This could provide legal basis for the police to arrest an individual locking up a bicycle where it could obstruct over one person walking down a street. Although we understand that should an individual prove that they had a reasonable excuse for carrying the equipment in question, we are very concerned that individuals would need to have "reasonable excuses" for carrying out simple and routinely private actions. We are further concerned that those who infringe the law would face penalties of up to 51 weeks in prison and/or a fine.

Moreover, the offence of an individual being equipped for "locking on", which would criminalise an even wider breadth of conduct, is of further concern. The overly broad definition of this offence, by which the possession of an "object" with the intention that it will be used to or in connection with "locking on" would be disproportionate on account of the broad range of activities it could encompass. Such an offence would seem to criminalise, for instance, medical personnel present at

[3] A/HRC/31/66, 2016, para. 10; A/HRC/20/27, 2012, para. 24

[4] *Djavit An v. Turkey*, 2003, para. 56; *Kudrevičius and Others v. Lithuania*, 2015, para. 91

locking on protests with medical equipment, or protest monitors equipped with cameras or clipboards in view of monitoring the event and police actions. As such, there would be no requirement for individuals to undertake action that assist directly with or contribute to completing the "locking on" for their action to be criminalized under the Bill's provisions. Indeed, for an action to fall under the offence of "locking on", the "object" they use would need only to be intended to be utilised "in connection with" said offence. We are thus concerned that such a criminalization based on vague provisions could overstep in a broad manner the stated intention of targeting lock on protestors.

We understand that, in relation to the proposed offences of obstruction to major transport works and interference with use or operation of key national infrastructure, there is a defence provided in the Bill where such disruption occurs as a result of a "trade dispute". Nevertheless, the vague and broad wording would appear to provide powers to the police to pursue a prosecution against individuals suspected to have committed such an offence, at which stage they would have to incur the costs and burden of legal action in court at a later date, in order to invoke said defence. Furthermore, the trade dispute defence would appear to remain insufficient if intended to protect workers' and trade union activities, as its application would be limited to 'workers' and not those attempting to show support. Moreover, this defence would not be applicable for other offences proposed in this Bill, which could lead to a chilling effect on the ability to organise for disputes related to trade and form solidarity or coalition networks.

The new offences of causing serious disruption by tunnelling, by being present in a tunnel, and being equipped for tunnelling could criminalize various disruptive protest tactics, unduly restricting the legitimate exercise of the rights to freedom of peaceful assembly and of expression, without providing for effective safeguards. The Bill would extend new powers to additional government agencies, such as the British Transport Police and the Ministry of Defence Police, who could thereby impose conditions or undue restrictions on protests.

Relative to Serious Disruption Prevention Orders

The introduction of "Serious Disruption Prevention Orders", would provide extraordinary powers to the police to criminalise and prohibit a broad range of individuals from the legitimate exercise of their rights to freedom of peaceful assembly and of association (article 21 ICCPR), as well as of expression (article 19 ICCPR).

The vague and overarching wording of this clause could provide for the criminalization of a vast range of peaceful activities by the police. While meant to target individuals who are determined to repeatedly cause disruption to the public, the Bill might *de facto* target a larger group of persons, including criminalizing some individuals for the behaviour of others.

Moreover, the conditions to impose "Serious Disruption Prevention Orders" would include to prevent someone from committing a "protest-related offence", defined by clause 33 as "an offence which is directly related to a protest". Such a definition could thus cover a number of new offences - such as unknowingly breaching the conditions imposed on a public procession - but also offences which are carried out in the vicinity, but are otherwise unrelated to actions causing disruption, as

these could be taken as being "directly related" to the protest.

Additionally, "Serious Disruption Prevention Orders" could be imposed in order to prevent an individual from carrying out "activities related to a protest" that could cause serious disruption, without defining what could constitute an activity related to a protest. Likewise, there is no further specification as to what activity could be deemed as "causing or contributing to" another person carrying out an offence or breaching an injunction. It appears that the broad scope of these provisions could, for example, be used to target union leaders who generally attend and organise pickets, or religion leaders. It is also unclear on how such broadly worded terms could be operationalised practically by the police forces themselves.

As the Special Rapporteur on the rights to freedom of peaceful assembly and of association stated in a recent report to the UN General Assembly, limitations of peaceful assembly on the grounds of broader and more general offences of nuisance and disorderly conduct must be tightly defined in order to comply with human rights law and prevent undue interference with the right to peaceful assembly.[5]

Additionally, the magistrates court would be empowered to impose "Serious Disruption Prevention Orders" where it would consider it necessary, subject to the abovementioned conditions, to prevent an individual from providing any support or other contributions to any other individual carrying out protest-related activities that are likely to result in a serious disruption to two or more persons. Such an over encompassing definition would appear to give the ability to courts to impose "Serious Disruption Prevention Orders" in order to prevent individuals from carrying out activities such as financial donations in support of arrested protestors, cheering on participants in a protest, or driving individuals to protests, as they could be considered as contributing to activities that are likely to result in "serious disruption".

We would like to respectfully remind your Excellency's Government that peaceful protests are a legitimate use of public space and that a certain level of disruption to ordinary life must be tolerated. 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".[6] 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."[7] As noted by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, in a report to the UN General Assembly, a certain level of disruption of ordinary life, including disruption of traffic, annoyances and inconveniences to which business activities are subjected must be tolerated if the right to freedom of peaceful assembly is not to be deprived of meaning.

We are concerned at the apparent low evidential standard provided for in these clauses for "Serious Disruption Prevention Orders". In particular, the court in question

[5] A/76/222, para. 63.
[6] ECtHR, *Disk and Kesk v. Turkey*, Judgment of 27 November 2012, para 29
[7] UN Human Rights Committee, General Comment No. 37, paras 44 and 85

would need only to be satisfied "on the balance of probabilities" that the abovementioned conditions are met. Such a low standard would greatly facilitate the imposing of "Serious Disruption Prevention Orders" on individuals, which in turn carries significant criminal penalties if breached. While we understand the civil nature of such Orders, the serious criminal consequences that they entail should not be overlooked. Certain aspects of civil proceedings, such as hearsay evidence, would appear to be admissible, which would render it permissible for the police to make statements on behalf of other individuals as proof that the order should be issued. In the context of "Serious Disruption Prevention Orders", on conviction of a "protest-related" offence, it appears that the court could also consider evidence from the proceedings of the individual's current offence - even criminal proceedings, in which such evidence was considered inadmissible. It would therefore appear that, when determining whether to issue "Serious Disruption Prevention Orders", the court could consider otherwise inadmissible evidence, such as hearsay, or unreliable and illegally obtained forms of evidence.

When a court has decided to impose a "Serious Disruption Prevention Order" on an individual, the Order appears to provide for an array of intrusive measures. In line with clauses 21(2) and 21(4), an individual might also be subject to electronic monitoring for up to 12 months at a time - could extend to 24/7 surveillance - even where they would not have been convicted in a court of law. We are concerned that such measures would impose disproportionate restrictions on an individual's right to privacy. In a report to the General Assembly, the Special Rapporteur on the rights to freedom of peaceful assembly and of association stated that extensive surveillance by law enforcement is a result of the criminalization of environmental protesters and organizations and creates a chilling effect which may deter others from participating in assemblies or joining organizations for the purpose of pursuing climate justice,[8] among many other human rights issues.

We are also concerned by the lack of limitation on the number of times "Serious Disruption Prevention Orders" could be imposed, the duration of which could last between one week and two years. Such restrictive measures on fundamental freedoms, including restrictions on internet use and on movement, could result in disproportionate and undue violations of international human rights laws and standards.

The apparent broad and overarching nature of "Serious Disruption Prevention Orders", in addition to what appears to be their low evidential standards, could, in practice, enable courts and the police to possibly suppress most if not all protests.

Relative to increased stop and search powers

With regards to the Bill's provisions providing for increased stop and search powers to the police, they would be disproportionate, lack in evidential basis, and might lead to discriminatory practices insofar as ethnic minority individuals might be unduly targeted.

Clause 11(2) would provide powers to the police to search an individual in cases where they have reasonable grounds for finding an object that is "made or adapted for use in the course of or in connection" with one of the offences. While we understand the need to protect individuals against serious violence in the context of

[8] A/77/222, para. 34.

assemblies, it remains unclear how such intrusive powers could be justified in the context of peaceful protests or the abovementioned lawful acts. Additionally, we note with concern reports that such measures could have a serious impact on legal observers monitoring protests, whereby they might be stopped and searched for objects on the basis that these are "prohibited" as they are made for use "in the course of or in connection with" the conduct of others of one of the listed offences. The apparent high level of discretion afforded to police officers under these provisions could therefore encompass a vast range of individuals acting peacefully and lawfully within a democratic society.

Furthermore, we are concerned by the introduction in clause 14 of an offence whereby a "person intentionally obstructs a constable in the exercise of the constable's powers", including when said law enforcement officer is conducting a stop and search without suspicion, as provided for in clause 11. Such an interference may lead to the severe penalties of imprisonment of up to 51 weeks, a fine, or both. It appears that this measure could entail that questioning an officer on their identity or intentions could be seen as obstruction and potentially lead to the individual asking them to be arrested for breaking the law.

Moreover, the purpose of said search would be to find a "prohibited object", which, as noted supra, appears to be defined in an overly broad and vague manner and could encompass a large range of common items. This clause would provide the de facto discretion to the police to stop and search all individuals in the area of the assembly. Such measures would be manifestly disproportionate and discriminatory and could lead to the criminalisation of individuals who would question or resist police searching them for no apparent cause.

The right to freedom of peaceful assembly would be most severely hindered by such broadly defined and ambiguous search powers. The mere threat of an unlawful police search might deter those seeking to protest peacefully from the legitimate exercise of their fundamental freedoms.

Relative to violations of the principle of proportionality

Finally, we are also concerned about the apparent severity of the sanctions imposed for violations of the Bill. The Human Rights Committee stated in its General Comment No 31 (2004) that when restrictions on a Covenant right are made, "States must demonstrate their necessity and only take such measures are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights". Concerning the freedom of peaceful assembly, the General Comment No. 37 (2020) stated that "[a]ny restrictions on participation in peaceful assemblies should in principle be based on a differentiated or individualised assessment of the conduct of the individual and the assembly concerned. Blanket restrictions in peaceful assemblies are presumptively disproportionate".

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.

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 stated by the Special Rapporteur on the rights to freedom of peaceful assembly and of association in a recent report to the General Assembly, the ability of individuals to mobilize, organize and connect and to contribute to shaping public opinion and decision-making without fear, is essential to the production of effective climate action and just transitions, notably through the full enjoyment of the rights to freedom of peaceful assembly and of association.[9]

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

1. Please provide any additional comment you may have on the above-mentioned information.

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.

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.

5. Please provide information on the steps your Excellency's Government intends to take to ensure the concerns raised in this communication are taking into account.

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.

[9] A/77/222, para. 8.

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

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

Ian Fry
Special Rapporteur on the promotion and protection of human rights in the context of climate change

David R. Boyd
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

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

Ana Brian Nougrères
Special Rapporteur on the right to privacy