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Promotion and protection of all human rights, civil,
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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, Maina Kiai

Addendum

**Mission to the United Kingdom of Great Britain and Northern Ireland:
comments by the State on the report of the Special Rapporteur***

* Reproduced as received.

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 the situation of freedoms of peaceful assembly and association in the UK.
2. We welcome the SR's visit to the UK and we are pleased to note his recognition of many areas of good practice. These include matters of devolution, the independent accountability of institutions and the creation of the Supreme Court. In responding to the report, we would like to take the opportunity to express our strong support for the SR's mandate. The British Government takes very seriously the importance of preserving and protecting human rights; be it in dealing with protesters and public disorders, redesigning the training and accountability of our forces or implementing counter terrorism strategies.
3. We welcome the consideration the SR has given in his recommendations to the protection of freedoms of peaceful assembly and association in the UK. We will give due consideration to the SR's recommendations.
4. The UK Government is confident that our current legislation fully meets our international commitments to human rights and provides adequate protection for the police to make operational decisions, independent of Government, to facilitate peaceful protest whilst ensuring public safety and security. The police work within a legal framework that is fully compliant with our commitments to international human rights. Appropriate oversight and scrutiny exists in the form of the Independent Police Complaints Commission and Her Majesty's Inspectorate of Constabulary who hold the police accountable for their actions and respond to complaints. Individuals also have the right to seek redress and challenge police decisions through the courts.
5. Turning to the report, we would like to make the following comments:

Right to freedom of peaceful assembly

Legal framework

6. **Para 10:** Under the Human Rights Act 1998, the courts must, so far as it is possible to do so, read and give effect to domestic legislation in a way that is compatible with the rights enshrined in the ECHR. If this is not possible, in respect of primary legislation they may make a declaration of incompatibility and, in respect of secondary legislation, may quash that legislation. Article 11 enshrines the right to freedom of association and assembly. These Articles parallel Articles 21 and 22 of the ICCPR.
7. **Para 12:** After "... intended to intimidate others", this should say "with a view to compelling a person to do something they are entitled to do". Under the Human Rights Act 1998 (in particular, under section 3 and 6), the courts must read and give effect to legislation in a way that is compatible with Article 11 which has built within it a requirement for an assessment of necessity and proportionality. Therefore, when approaching the test in section 12(1) and 14(1), the courts will have necessity and proportionality very much in mind.
8. **Para 13:** Section 12 of the Public Order Act 1986 enables the police to impose conditions on the holding of processions which may lead to serious public disorder, serious damage to property or serious disruption to life of the community. Conditions imposed must appear necessary in order to prevent such disorder, disruption and damage to property.
9. Section 13 provides that, where the Commissioner reasonably believes that the powers under section 12 will not be sufficient to prevent serious public disorder, he may make an order, with the consent of the Secretary of State, prohibiting public processions, or any class of procession specified, for a period of up to three months. The Secretary of State cannot ban a procession without this application.

10. The police must confirm that they have considered the Human Rights implications which arise under the relevant case law and ECHR provisions, principally Article 10 (freedom of expression) and Article 11 (freedom of association), and that they consider the ban necessary and proportionate in all the circumstances.

Enjoyment of freedom of peaceful assembly in practice

11. We welcome the SR's recognition of the UK as a country where the freedom of peaceful assembly is widely exercised and where we look to make continuous improvement. We welcome the SR's acknowledgement of the significant changes that have been made in policing peaceful protests and demonstrations since the G20 summit in London in April 2009.

Undercover policing and definition of 'domestic extremism'

12. **Paras 24-28, 34 and 35:** The SR has called for a judge-led enquiry into the Mark Kennedy case and recommended a tighter definition of 'domestic extremism'. The Government is committed to working with the police to implement the recommendations of Her Majesty's Inspectorate of Constabulary's (HMIC) report, "A review of national police units which provide intelligence on criminality associated with protest", published in February 2012. We will continue to consider the concerns of HMIC and ensure the police have a definition of 'domestic extremism' which gives them the clarity necessary to continue to do their job effectively.

13. Operation Herne, the investigation led by Chief Constable Mick Creedon and supervised by the Independent Police Complaint Commission (IPCC), should be allowed to run its course, including any criminal prosecutions or misconduct proceedings that may follow it. If, following the conclusion of that process, there remain legitimate unanswered questions, we will consider then whether it would be appropriate to hold some form of enquiry.

14. As was made clear during the passage through Parliament of the Regulation of Investigatory Powers Act, 2000 (RIPA), the Act provides a clear basis for investigatory powers to be used lawfully and in accordance with human rights. In particular, authorising officers must be satisfied that the use of an undercover officer is necessary and proportionate; RIPA also requires that undercover officers are properly managed and supervised. It is clearly important that these tests are applied correctly and the requirements are adhered to on a case by case basis; the statutory Codes of Practice provide public authorities with additional guidance. The Government does not consider, therefore, that the cases which have recently come to light demonstrate that a fundamental review of the legislative framework is necessary.

Containment

15. **Para 37:** We are pleased that the SR takes note of decisions given by British courts and the European Court of Human Rights with regards to the police use of 'containment' as a tactic. The use of containment by police at demonstrations is an operational matter for Chief Officers of the Police. The Government believes that a targeted and proportionate use of containment is in line with its commitments under international human rights. The Government works to ensure that containment is used by the police in a way that minimises the impact on those protesting peacefully.

Police use of force

16. The SR has raised some concerns about the police use of force. The Government has worked with the police to ensure that they comply with their commitments to

international human rights. The police have developed a document that reminds officers of their legal responsibility to use appropriate and proportionate force. This covers Section 3 of the Criminal Law Act and Human Rights Act 1998 with ECHR considerations. This document is given to all public order trained officers both in their training and immediately before any operational public order deployment. The national standards and professional practice for policing are set out in the Authorised Professional Practice (APP); the body of consolidated guidance for policing. The public order APP now includes ten overarching principles governing the use of force by police forces in England and Wales and three core questions for police officers to consider as to when force may be used, and to what extent.

17. The newly formed College of Policing has responsibility for reviewing the effectiveness of professional practices as a part of their annual inspection programme. The College has been established to ensure all forces operate to the highest professional standards, through supporting the professional development of police officers and building the research evidence base for the policing.

Police accountability

18. **Paras 54-55:** The SR states that the IPCC has lost credibility with civil society and is not seen as independent. The Government agrees that public confidence in the IPCC and the police complaints system more broadly is vital to improving public confidence in the police. The Government therefore welcomes the work that the IPCC are doing to enhance their oversight role of the complaints system and renew their external communications strategy to ensure the positive outcomes of its work are communicated effectively. In this context the Government also welcomes the work IPCC have done to clarify the roles and responsibilities between forces and the IPCC on communications in the aftermath of a death or serious injury incident. An IPCC survey in 2011 found that 85% of people thought that the IPCC would treat a complaint against the police fairly.

19. The Commission is accountable to Parliament through the Home Secretary. Approximately 90% of IPCC staff come from non-policing backgrounds. Those that do have a policing background provide experience and expertise that allow the IPCC to conduct competent and robust investigations. All IPCC investigators, irrespective of background, undertake a tailored and externally-accredited training programme.

20. All independent and managed IPCC investigations into the most serious matters are overseen by an IPCC Commissioner and the Government considers this to be a practical and proportionate way of ensuring that the most serious cases receive scrutiny by Commissioners. By law IPCC Commissioners cannot ever have served with the police. The Home Office welcomes the work the IPCC is doing to develop its own investigations workforce so that it continues to have investigators who do not have a police background.

21. The Government agrees that the IPCC's capacity to deal with the most serious cases needs to be increased. That is why the Home Secretary announced on 12 February 2013 the intention to expand the IPCC so that it has the capacity and capability to deal with all serious and sensitive allegations made against the police. The Government keeps the IPCC's resources under continuous review and a system is already in place to ensure that where the IPCC needs additional resources to investigate a particularly serious case then the Home Office will consider the IPCC's request.

Right to freedom of association

22. We welcome the SR's positive comments about the freedom of association enjoyed by the vibrant and flourishing civil society sector in the UK.

Counter terrorism measures

23. **Para 83:** This states that the Independent Reviewer of Terrorism Legislation stressed that organisations' were proscribed where there was no proof that they had ever been active in terrorist activities. However, the Independent Reviewer actually wrote that the three proscribed groups specifically mentioned had no record of violent activity in the UK. As set out in the Terrorism Act 2000, the Home Secretary can only proscribe an organisation if she believes that it is "concerned in terrorism", a decision which is then subject to Parliament's approval. An organisation that is only active overseas can still be proscribed in the UK. In fact, when considering whether to proscribe an organisation, the Home Secretary must have regard to discretionary factors, one of which is the need to support other members of the international community in the global fight against terrorism.

Trade Unionism

24. The SR has stated in para 89 of his report that "The right to strike is not explicitly protected in legislation". We would like to bring the following to his attention:

25. There is no express right to strike conferred under British law; however strike action is protected in two fundamental ways. First, trade unions are given immunity from liability in tort in respect of action done in contemplation or furtherance of a "trade dispute" (section 219 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULCRA")). Secondly, employees who take part in official strike action are protected from dismissal (sections 237, 238 and 238A of TULCRA).

26. The SR criticises the Employment Relations Act 1999 (Blacklists) Regulations 2010. The UK Government takes blacklisting very seriously and considers it to be an abhorrent activity. However, it remains of the view that this legislation is appropriate taking account of all the circumstances. Alongside the implementation of the blacklisting regulations, the powers of the Information Commissioner under the Data Protection Act 1998 (DPA) were strengthened in 2010 to give him power to impose a financial penalty up to £500,000 for misuse of personal data. Taken together with the blacklisting regulations this represents a significant deterrent and, to date, the Government has received no evidence that blacklisting is ongoing since 2010. Further, were an individual to suffer blacklisting today, the blacklisting regulations provide a right of complaint to an Employment Tribunal where compensation of no less than £5,000 and up to £65,300 can be made. In response to the criticism that there should be criminal sanctions the blacklisting regulations need to be seen in the context of other closely-related protections (in Part III of TULRCA 1992) which protect the rights of individuals to belong to a trade union, and to participate in the activities of their trade union. In general where a person is blacklisted and suffers a detriment as a result, they will simultaneously be discriminated against on trade union grounds under these provisions of TULRCA. Because blacklisting must of necessity involve the processing of personal data, the provisions of the Data Protection Act 1998 are also pertinent, which include criminal sanctions. We do not think there is any need to duplicate the criminal sanctions provided for in DPA in the relevant provisions in TULRCA or in the blacklisting regulations. The Government believes that the combination of the Blacklisting Regulations, the protections in Part III of TULRCA and the DPA provide a wide range of remedies and enforcement mechanisms.

27. The SR has raised concerns about limitations on strike action. The UK Government is satisfied that its legislation regulating the activities of trade unions complies with its international obligations, taking account of the need to balance the rights and freedoms of all its citizens and the fact that States have a margin of appreciation as to how trade union freedom may be secured. In particular, the limitation on secondary action is based on its experience of the detriment and hardship such action has previously caused to third parties and the general public, and the damage it inflicted on the economy.

Scotland

28. We welcome the SR's visit to Scotland. We were very happy to engage in a friendly and constructive dialogue with the SR during his visit, and we appreciate his positive comments in relation to the approach taken in Scotland.

29. With regards to the SR's comments on the **notification period** for processions, we note these. At present, the Scottish Government have no plans to alter the current notification period. It is worth noting that the notification period was, in fact, extended from seven days to 28 days under a previous Scottish administration. This was done by way of the Police, Public Order and Criminal Justice (Scotland) Act 2006. The purpose of that extension was to allow local authorities more time to consider notifications and reach a decision on whether to allow the parade, give public notice of forthcoming events in the area, and allow for effective planning of police resources. In terms of explaining the rationale for the limit, it may be helpful to explain that the (then) Scottish Executive had asked Sir John Orr, formerly Chief Constable of Strathclyde Police, to review the arrangements in place for marches and parades, given the previous arrangements have been in place for over twenty years and needed to be refreshed. Sir John's report contained 38 recommendations which emerged following wide ranging consultation and there was a considerable degree of consensus around the changes necessary. As part of the review, Sir John Orr considered whether the period should be extended and concluded that 28 days represented a more realistic notice period. In practice, many organisations already gave considerably more than the 7 days' notice. As the SR is aware, the afore-mentioned Act also provides for Scottish Ministers to prescribe, by order made by statutory instrument subject to negative resolution, processions to be exempt from the notification requirements. This section also allows local authorities to waive the 28-day notification requirement in exceptional circumstances.

30. With regards to the SR's comments on the **nature of parades, the dialogue between different bodies and the role of the police**, we note these and welcome the SR's positive remarks. With regards to pre-emptive measures, these would be a matter for the Chief Constable, but it should be noted that any such pre-emptive action would involve members of the public who have a history of illegal behaviour at similar events. With regards to surveillance, Police Scotland have a general duty to prevent crime and disorder, and intelligence gathering and surveillance are conducted for the purposes of preventing or detecting crime and preventing disorder. The legal basis for the management of police information is the Data Protection Act 1998, and police must also have regard to the provisions of the Regulation of Investigatory Powers Acts and the European Convention of Human Rights under the Human Rights Act (1998). There requires to be a legitimate reason for holding information and data protection principles relating to quality and security in the handling of material must be strictly observed.

31. With regards to the SR's comments on **cost recovery and harmonising the approach to marches/parades across all local authorities**, we note these. It is important to emphasise that charges are not imposed but are discussed and negotiated with the organisers. The purpose of the charges is to ameliorate the real and potential negative impacts of processions upon local communities, as well as ensuring the safety of both participants and the general public. In the absence of those, some parades might not be able to proceed. It is our view that these costs are appropriate, legitimate and proportionate, and we do not accept they have the effect of unduly restricting the exercise of peaceful assembly. Moreover, we are unaware of any proposed procession not taking place because of this requirement. However, Glasgow City Council have reviewed their code of conduct since the SR's visit, implementing a refreshed version through negotiation and discussion with both procession organisers and the police in order to seek to resolve through partnership any difficulties or concerns. Indications are that the revised policy has had a

positive impact on the management of marches and parades in the Glasgow area. Training of stewards by the marching organisations, with support from the police, has allowed the police to reduce their presence and has reduced costs to the public purse. With regards to harmonisation of approach across local authorities, it should be noted that different parts of Scotland have different numbers and types of processions taking place in their areas, and different challenges in dealing with them. It is therefore important to maintain the principle of local discretion, within a legal framework, for handling processions and gatherings. The Scottish Government's Advisory Group on Tackling Sectarianism in Scotland has commissioned research into the community impact on marches and parades which is taking place at the moment. Facilitating parades across the country will be looked at following that research. There is national statute and also national guidance to local authorities throughout Scotland, but local differences need to be taken into account.

Northern Ireland

32. It should be noted that responsibility for public order issues passed from central Government to the Devolved Administration in Northern Ireland following the devolution of policing and justice in April 2010. Delivery of public order functions rests with the Police Service for Northern Ireland (PSNI). Government retains responsibility for parading under the legislation set out in Public Processions Act (NI) 1998 and is responsible for appointment to the Parades Commission under the same legislation. However, the Parades Commission operates independently of Government and is responsible for, in the most part, the delivery of the legislation.

33. **Para 62:** This paragraph warns against the blanket bans on public processions and meetings. PSNI have to date never sought to ban an open-air public meeting. Consideration would only be given to doing so in the most extreme circumstances, and in accordance with our domestic and international legal obligations.

34. **Para 63:** In response to the concern that Article 20 is a very broad provision that could be used as a right to freedom of peaceful assembly this power is used only in rare cases and only where there is a clear and pressing need to do so, in line with domestic and international legal obligations. Examples would include where disorder is imminent or where the road is an arterial route or in the vicinity of a hospital. Negotiations are always sought with protestors and participants would always be warned before any action is taken. It remains the position of PSNI that peaceful protest will always be facilitated to the extent possible.

35. **Para 64:** It remains the position of Government that any gatherings which are not notified as parades are not subject to consideration by the Parades Commission under the powers contained in the Public Processions (NI) Act 1998. We remain confident that the PSNI has the necessary resources to manage the circumstances that arise on such occasions through normal policing measures. Many people who have taken part in such gatherings have been brought before the courts and prosecuted using existing public order legislation.

36. **Para 65:** We acknowledge the comments that the Parades Commission may not enjoy full support across the community however we would stress that the Commission continues to have the full support of Government and it remains the only body with the authority to regulate on parades in Northern Ireland. Determinations made by the Commission are legally binding and we would urge all involved in parades or associated protests to adhere to the rule of law and abide any determinations which the Commission might make. It is ultimately in the interests of all the people of Northern Ireland to find a locally agreed solution to the issue of parading and we continue to urge all of those with influence to continue to work towards this goal.

37. **Paras 67- 68:** The Parades Commission already provide clear reasons for their decisions although it should be added that they are constrained as to the amount of information they can produce publicly. The Commission are also making very significant outreach efforts including, but by no means exclusively, 17 public meetings in the last 24 months. Also there have been numerous efforts to engage with political leaders by way of frequent correspondence and meetings. The Commission has also appeared before the Northern Ireland Executive OFMdFM Committee (despite not being obliged to attend) and have recently started to have a presence at Political Party conferences.

38. Governments position remains that it is crucial that local political and community leaders in Northern Ireland work together to address the issues around parading and flag protests in a constructive way and also that they address the wider issue of sectarian division. The Government welcomes the recent Cardiff talks initiative, facilitated by the PSNI, which brought together influential political and community leaders from Northern Ireland to have an open and frank conversation about policing in Belfast, in particular the policing of public order events and the issues surrounding community and police relations. These talks produced a very positive outcome and we would urge all involved to continue to engage in this fashion.

39. **Para 69-70:** states that organisers should not incur liability for the unlawful or violent acts of others. Parades Commission publications already make it clear that law enforcement officials and not parades organisers have primary responsibility for maintaining peace during parades.

Conclusion

40. In conclusion, we would like to assure the Special Rapporteur of the United Kingdom's continuous support for his mandate and wish to thank him for his visit and for this report.
