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Rt Hon Sir Lindsay HOYLE MP
Speaker of the House of Commons of the United Kingdom

Rt Hon the Lord McFALL OF ALCLUITH
Lord Speaker of the House of Lords of the United Kingdom

Strasbourg, 1 July 2021

Dear Speaker, Lord Speaker,

As Council of Europe Commissioner for Human Rights, my mandate is to foster the effective observance of human rights in all 47 member states of the Council of Europe. To this end, an important part of my work is to engage in dialogue with the governments and parliaments of member states, and to assist them in addressing possible shortcomings in their laws and practices.

In this capacity, I am writing to you in relation to the Police, Crime, Sentencing and Courts Bill, which will pass its remaining stages in the House of Commons on Monday. The Bill is clearly a very wide-ranging piece of legislation, with many provisions having a potential impact on the enjoyment of human rights. I would like to address certain elements of the Bill that give rise to specific concerns from a human rights perspective.

The first of these relates to the proposed clauses on protests and public order, which would see a lowering of the threshold to impose conditions on assemblies and processions based on potentially disruptive noise levels generated, creates new powers to impose conditions on static protests, and expands the offence of failing to comply with conditions to those who ought to know these were imposed, in England and Wales. I note that many international and domestic actors have expressed serious concerns about these proposals, which have the potential to significantly impact on the exercise of the rights to freedom of expression and to freedom of assembly, as protected by Articles 10 and 11 of the European Convention on Human Rights (ECHR) and other international instruments. This includes the UN Special Rapporteurs on the rights to freedom of peaceful assembly and on the promotion and protection of the right to freedom of opinion and expression, the Equality and Human Rights Commission, the Joint Committee on Human Rights, and numerous civil society organisations and academic experts.

I fully share their concerns that the provisions in the Bill are often broadly formulated and thus risk being arbitrarily applied, and that they may very well be at variance with Articles 10 and 11 of the ECHR as interpreted by the European Court of Human Rights (the Court), requesting that any interferences with the above-mentioned rights be lawful, necessary and proportionate. I recall that the right to freedom of peaceful assembly has been recognised as a fundamental right in a democratic society. It is a legitimate way to express dissent, for example, disagreement with laws, policies and practices of governments, and is often a key means for people who would otherwise struggle to have their voices heard to express their grievances. In doing so, protests are often inherently disruptive, including through the generation of noise, even if this causes disturbance to others. As stated by the Court, and as emphasised in the [Guidelines on Freedom of Peaceful Assembly](#) of the European Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (ODIHR), a demonstration may also annoy or cause offence to persons opposed to the ideas or claims that it is seeking to promote. In this respect, states do not only have a strong positive obligation to protect this right, but to facilitate its exercise as well.

Since taking up my mandate, and as exemplified in my 2019 [Human Rights Comment](#) on shrinking space for freedom of peaceful assembly, I have increasingly had to address instances in which Council of Europe member states have tried to introduce restrictions on peaceful demonstrations, often implicitly driven by the desire of governments to minimise the possibility of dissent. I am seriously concerned that, if the above-mentioned provisions were to be adopted, the UK would add to this worrying trend.

In the light of this, I call on the members of both Houses not to accept provisions of the Bill that would add further restrictions on peaceful demonstrations. Rather, what is mainly required to deal with the issues identified by the government is focusing primary attention on how peaceful demonstrations, even when these cause a certain level of disruption to ordinary life or express controversial views, can best be facilitated to ensure the full protection of the exercise of the rights to freedom of expression and assembly.

A second problematic element of the Bill concerns the criminalisation of trespass in relation to unauthorised encampments. It has already been noted by many actors, including the Equality and Human Rights Commission and a range of civil society organisations, that the provisions on this matter will specifically impact on Gypsy, Roma and Traveller communities leading a nomadic lifestyle. The Bill will expand the possibilities of enforcement, including bans on returning to land for extended periods, and the seizure of property, which may even include the vehicles in which persons live.

Gypsy, Roma and Traveller communities in the UK are often already in a very marginalised position, and frequently subjected to severe prejudice, some of which was unfortunately also evident during the discussions on the Bill at the Committee stage. This marginalisation has been exacerbated by the reduction of socially rented Gypsy, Roma and Traveller sites in recent years. While the government can legitimately pursue actions to prevent public disorder, crime or nuisance, these should be clearly circumscribed, and any measures taken in this respect should be proportionate and non-discriminatory. I am not convinced that this is the case for the new provisions proposed in the Bill, including in view of their far-reaching consequences, especially as I have been informed that powers to deal with such issues are already available. From this perspective, the provisions in the Bill, in my view, raise serious questions about their compatibility with the UK's obligations under international human rights standards.

In this respect, I call on the members of both Houses not to accept provisions on the new criminal offence of trespass, but rather to insist that the government works with affected communities to find appropriate solutions to the question of encampment, including ensuring the sufficient availability of publicly provided authorised sites and other measures that would facilitate those communities exercising their rights in a manner that is satisfactory for all involved.

I am fully aware that the points above only address a limited number of issues and that concerns have also been raised by various actors on the human rights impact of other elements of the Bill, such as in relation to access to justice for people with disabilities, or the protection of the rights of victims, such as in relation to the extraction of potential evidence from their digital devices. I trust that the members of both your Houses will take these concerns into account fully, and ensure that provisions that risk not being compliant with international human rights standards are addressed accordingly. I particularly urge the members to give priority to removing any proposals that appear discriminatory, either by their purpose or design, or by their potential effect, which should be carefully assessed. Crucially, new provisions must aim to eliminate, rather than exacerbate, the already existing disproportionate impact of criminal justice and policing measures on minority groups, including people of African descent.

I would appreciate if you could share this letter with the members of your respective Houses.

Sincerely,



Dunja Mijatović