



THWARTING THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY (20 November 2002)

Ulster Human Rights Watch Preliminary Analysis of Sir George Quigley's report on the Review of the Parades Commission and Public Processions (Northern Ireland) Act 1998

The report on the review of the Parades Commission and Public Processions (Northern Ireland) Act 1998, prepared by Sir George Quigley, recommends the introduction of new legislation to strengthen the present system applied to the parades organised by the Loyal Orders. The Ulster Human Rights Watch (UHRW) has carried out an analysis of this report. It will briefly highlight (1) the major flaws of this document and describe (2) the quadruple-lock system designed to deal with parades.

1. The major flaws of Sir George Quigley's report

Four major flaws have been identified: (1) Sir George Quigley has failed to outline factors determining restrictions on protests and to describe the process by which restrictions are to be applied to protests which are related to parades; (2) he has failed to acknowledge that detailed legislation would curtail the right to freedom of peaceful assembly; (3) he has omitted the importance of Article 9 of the ECHR in the context of parades organised by the Loyal Orders; and finally (4) he has ignored the central problem of terrorist-influenced residents groups.

1. Failure to outline the factors determining restrictions on protests and to describe the process by which restrictions are to be applied to protests related to parades

The report has pointed out that both processions and the protests organised to object to them should be dealt with by the same body. It recognises that it is illogical under the present legislation that restrictions imposed on processions should be decided by the Parades Commission while related protests can only be restricted by the Police Services of Northern Ireland (PSNI). However, in his report, Sir Quigley explains in detail the factors which should be taken into account to prepare Guidelines for determining whether restrictions should be placed on parades, but he does not identify any factors to determine whether restrictions should be applied to the protests which are organised with the purpose of objecting to the parades.

Sir George Quigley has also failed to explain the process which should be used in order to impose restrictions on a protest related to a parade. Since a protest is to be notified only after a Determination has been issued by the Determining body, how will restrictions be decided by that Determining body? The report is particularly unclear on that point and everything suggests that the objectors will be given extended means to abuse the right to freedom of peaceful assembly of those who want to parade.

2. Detailed legislation to curtail the right to freedom of peaceful assembly

Although processions and protests both fall under the umbrella of Article 11 of the European Convention of Human Rights (ECHR), the proposed legislation will be designed to regulate in particular the Orange Order's right to freedom of peaceful assembly. Rather than provide a better guarantee for the right to freedom of peaceful assembly, Sir Quigley has proposed very detailed legislation involving complex processes, which will have the adverse effect of reducing the right to freedom of peaceful assembly of those who wish to exercise their right to process. Details regulating paraders' right to freedom of peaceful assembly will only impose increasing conditions and limitations on the enjoyment of their rights. Rather than strengthening the right to freedom of peaceful assembly, the proposed legislation will curtail it.

3. Omission of Article 9 of the ECHR in the context of parades organised by the Loyal Orders

The report has not made any specific reference to the right to freedom of religion, enshrined in Article 9 of the ECHR, combined with the right to freedom of peaceful assembly. Since the Orange Order is essentially based on the Protestant Reformation, the right to freedom of religion is an essential aspect which should have been fully taken into consideration in the report. The right to freedom of religion includes the right to manifest one's religion publicly and to try to convince one's neighbour through appropriate means. Therefore the possibility of witnessing to others, such as evangelising during parades, must be maintained. Unfortunately, this fundamental right has not been properly taken into consideration in the report.

4. The central problem of terrorist-influenced residents groups ignored

The very serious and concerning issue of terrorist-influenced residents groups has been entirely omitted in the report. By threatening violence, terrorist-influenced residents groups are at present attempting to force the Loyal Orders to agree to face-to-face discussion. The Public Procession (N.I.) Act 1998 has already been shown to favour residents groups. If the new recommendations become legislation, terrorist-influenced residents groups will be given even more efficient means of undermining others' rights to freedom of peaceful assembly and freedom of religion through the threat of violence in the triple-locked system described in Part 2. The central problem of terrorist-influenced residents groups, which the new proposed legislation would further support, has been totally ignored by Sir Quigley.

These four fundamental flaws make the system recommended by Sir George Quigley unreliable and detrimental to human rights and fundamental freedoms.

2. The quadruple-lock system recommended in Sir George Quigley's report

Sir George Quigley has devised a four-stage system to deal with the Loyal Order's parades. (1) The first stage is one of mediation under the supervision of a Facilitating body; (2) the second is one of proceedings before a Determining body; (3) the third is one of assessment by the PSNI; and (4) the fourth is one of compliance operated by a Branch of the Determining body.

1. Stage One: Mediation under the supervision of a Facilitating body

Parades for the following year would have to be notified before the 1st October of each year in order to allow time for mediation to take place between the Loyal Orders and the objectors. This stage would be supervised by the Parades Facilitation Agency, whose duty would be to intensify mediation so as to facilitate some kind of local arrangement. If an agreement is not reached the

Orders would have to obtain a certificate from the Facilitation function, stating that the parade organiser has engaged in the mediation process with good faith. Without this certificate, the organiser would not have the right to seek a Determination from the Determining body in view of exercising the right to freedom of peaceful assembly.

2. Stage Two: Proceedings before a Determining body

Before proceedings could commence, the Determining body, called a Rights Panel for Parades and Protests, would have to have a report from the chief facilitation officer certifying that the organiser of the parade has acted in good faith and participated in a manner that was designed to resolve the issue involved. This Determining body would comprise three members: the chairman would be appointed by the Lord Chancellor, and the two other members would be drawn from a list of suitable persons. A hearing would be organised before the Determining body at which the Loyal Orders and the objectors would be obliged to present their case. The Orders would therefore become a party to a dispute arguing their case against the objectors before the Rights Panel. The right to freedom of peaceful assembly will be treated on an equal footing with any rights which the objectors may wish to put forward and argue upon. After the hearing, a Determination will be issued on the basis of the Guidelines giving the reasons for the conclusion. If the Rights Panel puts restrictions on the parades, then the Loyal Orders could seek judicial review before a court. The Determination would of course be enforced by the PSNI. However, even if the Rights Panel does not impose restrictions, the Loyal Orders would nevertheless have to await the decision of the PSNI at Stage Three.

3. Stage Three: Assessment by the PSNI

Within fourteen days of the rendering of the Determination by the Rights Panel on Parades and Protests, the objectors would have the right to notify that they will organise a protest to oppose the parade. It is unknown how the Rights Panel on Parades and Protests would be able to make any decisions concerning a protest related to a parade, since the protest would only be notified after a Determination concerning a parade has been issued. At the third stage, the PSNI alone would have to make a decision in the interests of national security or public safety or for the prevention of disorder or crime. If violence is likely to flare up or if they do not have the necessary resources to guarantee public safety, the PSNI would have the power to impose restrictions on the parade. As a result, all the effort invested during Stage One and Two would prove to have been in vain at Stage Three.

4. Stage Four: Compliance operated by a Branch of the Determining body

The compliance function is described by Sir George Quigley as “crucial”. Its purpose is to ensure that a Determination is respected. The body in charge of this function would be the Compliance Branch of the Rights Panel for Parades and Protests. It would receive reports from monitors and police immediately after a parade has taken place. Any failure to comply with the Determination could lead to a warning or even a sanction imposed on the organiser of the parade by the Chairman of the Rights Panel for Parades and Protests.

CONCLUSION

Under the new legislation terrorist-influenced residents groups would be in a position to use the threat of violence more effectively at the different stages of the process, in order to force the Loyal Orders to negotiate and eventually to thwart their fundamental rights i.e. during the mediation process, before the Rights Panel for Parades and Protests, during the assessment by the PSNI and finally using the Compliance Branch to lodge complaints.

The objectors' main argument to oppose parades is that they also have rights. However, nothing in the ECHR can be interpreted as implying for any group of persons the right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms enshrined in the Convention itself (Article 17 of the ECHR). The duty of the State is to forbid practices which aim at the destruction of human rights and fundamental freedoms. It is not to encourage through any particular legislation those who through their activity and actions aim at annihilating the rights of others. The quadruple-lock system proposed by Sir George Quigley in his report is a threat to fundamental freedoms, in particular to the right to freedom of peaceful assembly.

Therefore, the report's recommendations raise very serious concerns which imperatively require to be addressed. Any legislation based on this report must not be rushed through Parliament. This is why the Ulster Human Rights Watch demands that the Secretary of State extend the Consultation period to allow essential submissions to be made in order to guarantee the protection of human rights and fundamental freedoms in relation to the organisation of peaceful assemblies in Northern Ireland.