Questions on best practices that promote and protect the rights to freedom of peaceful assembly and of association

It would be deeply appreciated if responses were brief. Responses in bullet-points are encouraged.

For non-governmental organizations (NGOs), should they so wish, their identity will remain confidential (only the country where they operate will be disclosed).

**Right to freedom of peaceful assembly:**

1. **Please a) describe positive legislative/institutional measures taken to facilitate the exercise of the right to freedom of peaceful assembly in your country; and b) provide one or more recent examples where the right to freedom of peaceful assembly in your country has been adequately enjoyed and the reasons for citing this example(s).**

   - The right to peaceful protest is entrenched as a vital expression of British democracy. Every year tens of thousands of people march and assemble on public streets to commemorate, celebrate or demonstrate against all manner of events, causes and issues. Over 5,000 protests take place in London alone each year, and nationally the vast majority of these protests pass off peacefully.

   - The UK has ratified a number of binding international human rights instruments which guarantee the right to freedom of peaceful assembly, including the International Covenant on Civil and Political Rights and the Charter of Fundamental Rights of the European Union. The Human Rights Act 1998 also ensures protection of the right to freedom of expression and peaceful assembly as guaranteed under the European Convention on Human Rights.

   - The Government fully supports the public’s right to peaceful protest, which is why sections 132-138 of the Serious Organised Crime and Police Act 2005 (SOCPA) was repealed in the Police Reform and Social Responsibility (PRSR) Act 2011. Sections 132-138 of SOCPA required anyone wishing to demonstrate within one kilometre of Parliament to notify the Metropolitan Police Service (MPS) in advance for authorisation of their protest.

2. **Please a) describe positive legislative/institutional measures taken to protect peaceful protesters, including against agents provocateurs and/or counter-demonstrators; and b) provide one or more examples where peaceful protesters were effectively protected.**

   - The police draw on a wide range of statutory and common law powers with regard to demonstrations, including the Criminal Law Act 1967, the Police and Criminal Evidence Act 1984, the Criminal Justice and Public Order Act 1994, the Regulation of Investigatory Powers Act 2000, the Terrorism Act 2000, and the Serious Organised Crime and Police Act 2005. Taken together, these laws allow the police to use reasonable force, to stop and search, to arrest, to use overt and covert surveillance, and to take action to prevent breaches of the peace. Since the Human Rights Act 1998, the use of all such police powers must comply with Article 11.
• Regulation of the policing of demonstrations is the responsibility of Her Majesty's Inspectorate of Constabulary (HMIC), which describes its role as monitoring and reporting on “forces and policing activity with the aim of encouraging improvement”. HMIC reported in November 2009 that positive action had been taken to ensure police compliance with Article 11. It stated that “the police as a service has recognised and adopted the correct starting point for policing protest as the presumption in favour of facilitating peaceful protest.” HMIC further cited “committed attempts by the police to facilitate contentious protests and counter-protests in Derbyshire, Birmingham, Manchester, Gwent and Leeds over recent months”.

• Peaceful protesters are always protected by the police. For example, a protest by the English Defence League (EDL) always attracts opposition groups to gather for counter protests. Police always take action to protect EDL supporters even though their views are distasteful and not shared by the majority. There have been over 30 EDL demonstrations in the UK since 2009. The most recent event where EDL supporters were protected by the police took place in Tower Hamlets on 3 September, where a group of EDL supporters came under attack from the local youths.

3. Please describe measures taken to ensure that any restrictions on the free exercise of the right to freedom of peaceful assembly are in accordance with your obligations under international human rights law (proportionality test and due process guarantees). Please explain the legal status of spontaneous assemblies.

• The law in UK recognises the need to balance the necessity for police to have powers to prevent and deal with disorder, and protect local communities, with democratic rights to peaceful protest. This includes rights to express views that are within the law but which we may find uncomfortable or distasteful; the protection of minority views is central to rights to freedom of expression.
• Legislation is compliant with and meets obligations under international human rights law.
• The law is clear that neither the police nor the Government have any powers to ban a static demonstration (including spontaneous assemblies) unless it is on private property. Static demonstrations do not by law have to be notified in advance.
• There are very limited powers to ban a march/procession. A march/procession can only be banned where the police consider that it would result in serious public disorder and that its power to place restrictions or conditions on such a march – for example its duration, location and size - would not be enough to prevent the disorder.
4. Please a) describe positive legislative/institutional measures taken to ensure accountability for i) arbitrary restrictions to hold assemblies; ii) arbitrary or excessive use of force by law enforcement officials against peaceful demonstrators; and iii) violence by *agents provocateurs* and/or counter-demonstrators; and b) provide one or more examples for each of these situations where such measures have been implemented.

- Regulation of the policing of demonstrations is the responsibility of HMIC. In April 2009, the death of Ian Tomlinson, a bystander at demonstrations against the G20 Summit in London, prompted the Metropolitan Police Commissioner to ask HMIC to conduct a national review of public order policing. In “Adapting to Protest – Facilitating Peaceful Protest”, published in November 2009, HMIC established a new starting point for policing peaceful demonstrations that presumes in favour of helping them to take place.

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- At the end of 2010, the Association of Chief Police Officers (ACPO) published new guidelines that reflect this approach. The guidelines seek to ensure that the policing of peaceful protest complies with relevant human rights principles, in tandem with a new public order training manual issued by the National Policing Improvement Agency (NPIA).

- At a local level, individual forces have also shown they are committed to adopting a human rights approach to policing protest. During 2010 and 2011, West Yorkshire Police, Leicestershire Police, Cambridgeshire Constabulary and Bedfordshire Police appointed an independent human rights lawyer to advise on the legality and human rights implications of large scale public order operations in relation to controversial protests in their areas.

- The use of force by police officers is governed by the common law, the Criminal Law Act 1967, and the Police and Criminal Evidence Act 1984. These require that any use of force should be “reasonable” and proportionate in the circumstances, meaning that it is the minimum appropriate to achieve the lawful objective. Otherwise, it is likely that the use of force will be excessive, which is unlawful and may constitute a violation of Articles 2 (right to life), 3 (prohibition against torture, inhuman and degrading treatment) and 8 (right to respect for private life, which includes the right to physical integrity), and where this force is used in relation to peaceful protest, of Article 11 as well. Individual officers are accountable and responsible for any use of force and must be able to justify their actions in law.
5. In this context, please describe positive legislative/institutional measures taken to build and strengthen the human rights capacity of administrative and law enforcement officials in your country.

- In their report *Adapting to Protest – Nurturing the British Model of Policing (November 2009)*, HMIC provided practical guidance for police officers to comply with Human Rights legislation. HMIC published three flow diagrams on their powers and duties to ensure an approach to public order policing protest that complied with the demonstrators’ human rights.
- Human Rights is an integral part of all Public Order police training.

6. Please describe one or more recent examples where the right to freedom of peaceful assembly may have not been respected and the reasons for citing this example(s). In particular, please describe challenges faced in the implementation of laws, policies or programmes for the promotion and protection of the right to freedom of peaceful assembly in your country. Please provide details of any lessons learnt in that regard. Briefly evaluate, in both law and practice, the enjoyment of the right to freedom of peaceful assembly in your country, including by women, individuals facing discrimination or violence because of their sexual orientation and gender identity, as well as persons with disabilities, espousing minority or dissenting views or beliefs, and belonging to other groups at risk.

- The containment of protesters by the police, predominantly in London, has become an issue over the last few years, focused on the degree to which this coercive tactic is legitimate and proportionate. Containment involves enclosing a large number of protesters within police cordons and holding them in that space, thus preventing others from joining them and stopping those contained from leaving.

- The police justify containment as necessary to prevent breaches of the peace, disorder, violence, and damage to property. The use of the tactic has probably prevented violence between two conflicting groups of protesters in many protests. This was the case, for example, during a series of demonstrations and counter-demonstrations by the English Defence League and Unite Against Fascism in Bradford, Bolton, Leicester and other towns in 2010 and 2011.

- Yet containment can affect thousands of people who may be present at a protest. The practice has been criticised as a disproportionate response to peaceful protest and legal challenges have been brought on the ground that the police use of containment violates the right to liberty under Article 5.

- In this context, there have been two significant court judgments on the containment of protesters.

- The first case considered the use of containment of demonstrators at Oxford Circus in central London by the Metropolitan Police during May Day protests in 2001 which resulted in disorder and violence. The House of
Lords noted in its judgement that the need for measures of crowd control, adopted in the public interest, was not new. As examples, it referred to football matches, where such measures were imposed “to ensure that rival fans do not confront each other in situations that may lead to violence”; or restrictions that may be imposed on motorists “in the interest of road safety after an accident on a motorway”; or “to prevent local residents from coming too close to a fire or a terrorist incident”.

- On this occasion, the House of Lords found that the use of containment by the Metropolitan Police was lawful. It held that the use of containment by the police as a crowd control measure to prevent a breach of the peace did not infringe the right to liberty under Article 5 of individual members of a crowd, provided the tactic was resorted to in good faith, proportionate to the situation, and enforced for no longer than was reasonably necessary.

- The case was referred to the Grand Chamber of the ECtHR, which heard the application on 14 September 2011. A decision has yet to be reached on whether the police tactic of containment violated Article 5 in this particular case.

- The second case challenged the Metropolitan Police’s containment of the climate camp protest held at Bishopsgate in London on 1 April 2009 during the G20 summit. The police contained the camp to prevent it being joined by violent protesters from the nearby Royal Exchange, rather than because the camp itself could result in an imminent breach of the peace. About four hours after starting the action, the police dispersed the camp. The court held that containing the camp for this length of time was unlawful, even though it accepted that the measure could be lawful where there was an imminent risk of breach of the peace.

- The Metropolitan police have learnt lessons from this and subsequently invited Liberty to act as independent observer’s when they were policing a TUC march in London in 2010.

Right to Freedom of Association:

7. Please
   a) describe positive legislative/institutional measures taken to facilitate the exercise of the right to freedom of association by national and international organizations (e.g. are associations free to decide on their objectives, activities and board composition?);

Political Parties:

The UK Government considers that political parties and campaigners are vital to a healthy democracy and participation is encouraged. Members of the public can:
• join an existing political party or interest group
• stand for election as an independent candidate, or
• set up a new political party.

There is in place in the UK a statutory framework that provides for or allows the exercise of political rights such as the above. So long as a political party operates within the law, dissolution of a party is a matter for its members.

The Political Parties, Elections and Referendums Act 2000 (‘PPERA’) established the Electoral Commission, a body independent from Government. Under that Act, the Electoral Commission:

• maintains the register of political parties in Great Britain and Northern Ireland
• sets the standards for electoral registration and running elections, and report on how well this is done
• runs any referendums held under PPERA
• publishes details of where parties and other election campaigners get money from and how they spend it
• makes sure people understand and follow the rules on party and election finance, and
• makes sure people understand it is important to register to vote, and know how to vote.

and b) provide one or more recent examples where the right to freedom of association has been adequately enjoyed in your country and the reasons for citing this example(s).

The following UK Government website provides the latest statistics on trade union membership in the country up until the end of 2010, and is updated quarterly. 

This website also includes the following information which shows that historically freedom of association in respect of the trade union membership has been enjoyed in the UK for over 100 years.

• Trade union membership levels
• Historical trade union membership levels from 1892 to 2008/09
• Maps showing union density, union presence and collective agreements by region

In addition, information about the rights of workers, including their rights to belong to a trade union are publicly available, including via the following government website:
http://www.businesslink.gov.uk/bdotg/action/layer?r.l1=1073858787&r.s=tl&topicId =1074436102
8. Please detail the procedures to be followed to establish an association in your country, including the legal grounds upon which an application for registration can be rejected, where applicable. Please a) describe positive legislative/institutional measures taken to ensure a non-discriminatory, expeditious, easily accessible and inexpensive registration process; and b) provide one or more examples where such measures have been implemented. Are there effective remedies in case the registration is denied or delayed? Please indicate, if available, how many people have pursued these remedies, and the result thereof. Please specify the legal status of unregistered or de facto associations.

Registering a new political party:  
http://www.electoralcommission.org.uk/guidance/resources-for-those-we-regulate/register-a-new-party

Contesting elections as a candidate:  
http://www.electoralcommission.org.uk/guidance/resources-for-those-we-regulate/candidates-and-agents

The Special Rapporteur will wish to note that the UK Government has recently legislated to:

- hold a referendum on any transfer of power or competence from the UK to the European Union
- establish elections for Police and Crime Commissioners to make the police more accountable through oversight by a directly elected individual, and
- provide for referendums to give local communities more control over council tax, housing and planning decisions.

Establishing a union or employers’ association:  
There are no constraints on individuals establishing a union or employers’ association. However, for a union and its members to benefit from legal protection with regard to its activities, including strike action, the union needs to register with the Certification Officer (CO). It is the Trade Unions and Labour Relations (Consolidation) Act 1992 (http://www.legislation.gov.uk/ukpga/1992/52/contents) that established the role of the CO and the regulatory framework for registered trade unions and their activities. In registering, unions also receive rights such as the right of union representatives to time off to carry out union duties.  

The Certification Officer:
- Maintains a list of trade unions and employers’ associations
- Ensures compliance with statutory requirements and makes annual returns from unions and associations available for public inspection

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The Certification Officer:
- Maintains a list of trade unions and employers’ associations
- Ensures compliance with statutory requirements and makes annual returns from unions and associations available for public inspection
• Determines complaints
• Oversees political funds and finances
• Certifies independence of trade unions.

More information – including the Certification Officer’s annual report – can be found on the website at: [http://www.certoffice.org/](http://www.certoffice.org/)

The Act also established the **Central Arbitration Committee**, a permanent independent body that resolves disputes relating to:
• Recognition and derecognition of trade unions
• Disclosure of information for collective bargaining
• Information and consultation of employees


Information is also available at: [http://www.businesslink.gov.uk/bdotg/action/layer?r.l1=1073858787&r.l2=1074436102&r.s=tl&topicId=1074436131](http://www.businesslink.gov.uk/bdotg/action/layer?r.l1=1073858787&r.l2=1074436102&r.s=tl&topicId=1074436131)

9. **Please explain the procedure available to suspend or dissolve an association in your country. Are there effective remedies in case an association suspended or dissolved? Please indicate, if available, how many people have pursued these remedies and the result thereof.**

So long as a political party operates within the law, dissolution of a party is a matter for its members.

*Please see references in the previous question to the Central Arbitration Committee.*

10. **Please specify positive measures taken to ensure that any restrictions on the free exercise of the right to freedom of association are in accordance with your obligations under international human rights law (proportionality test and due process guarantees).**

[following up]

11. **Please indicate under which conditions associations can receive domestic and foreign funds or resources in your country. Are there any specific limitations (including in practice) on receiving funds or resources?**

Ensuring your party complies with the law on registration, donations and expenditure: [http://www.electoralcommission.org.uk/guidance/resources-for-those-we-regulate/parties](http://www.electoralcommission.org.uk/guidance/resources-for-those-we-regulate/parties)
12. Please a) describe positive specific legislative/institutional measures taken to promote and ensure the participation of associations in the decision-making process in your country; and b) provide one or more recent examples where such measures have been implemented.

Some examples of these measures, available via the website of the Department of Business Innovation and Skills (BIS) http://www.bis.gov.uk/policies/employment-matters/rights/trade-unions, but include the following:

- **Consultation: The blacklisting of trade unionists**

  BIS ran a consultation which sought views on draft regulations to outlaw the blacklisting of trade unionists. The consultation closed on the 18th August 2009.

  **Government response to consultation and Final Impact Assessment on the blacklisting of trade unionists: revised draft regulations**

- **Union Modernisation Fund (UMF)**

  The UMF provides financial assistance to independent trade unions and their federations. It supports innovative projects which speed unions' adaptation to a changing labour market and new ways of working.

  **Union Modernisation Fund**

- **Union Learning Fund**

  The Fund supports trade union led learning opportunities for their members.

  http://www.unionlearningfund.org.uk/index.cfm

  Union representatives are also part of the executive governance of Acas – the independent conciliation and arbitration body designed to improve workplace relationships – through their seats on the Acas Council (http://www.acas.org.uk/index.aspx?articleid=1461).

13. In this context, please a) describe positive specific legislative/institutional taken to build and strengthen the human rights capacity of administrative officials in charge of implementing the law in your country; and b) provide one or more recent examples where such measures have been implemented.

The Foreign and Commonwealth runs an introduction to human rights course for its staff, and staff that are working more specifically on human rights in parts of the
world with particularly difficulties in relation to human rights are able to undertake more extensive training to meet their needs.

14. Please describe one or more recent examples where the right to freedom of association may have not been respected and the reasons for citing this example(s). In particular, please describe challenges faced in the implementation of laws, policies or programmes for the promotion and protection of the right to freedom of association in your country. Please provide lessons learnt in that regard. Briefly evaluate, in both law and practice, the enjoyment of the right to freedom of association in your country, including by women, individuals facing discrimination or violence because of their sexual orientation and gender identity, as well as persons with disabilities, espousing minority or dissenting views or beliefs, and belonging to other groups at risk.

[Following up]
Cooperation with UN and regional human rights mechanisms:

15. Please indicate any cooperation your country has with the United Nations and regional human rights mechanisms aimed at maximizing the promotion and protection of the rights to freedom of peaceful assembly and of association. “

The Foreign Secretary said in his speech to the HRC in March 2011, “the duty of all states to promote and protect human rights is enshrined in the Universal Declaration of Human Rights, in subsequent treaties and in the founding resolution of this Council. The British government takes these responsibilities extremely seriously.” The UK therefore works to ensure it has good working relationships with UN and regional mechanisms aimed at maximising the promotion and protections of those rights, including the rights to freedom of association and assembly. We work to respond constructively to any requests from these organisations for information. Further details of the work we do are published in an Annual Human Rights report. The 2011 Report is in the process of being produced, and should be available at the end of March. The latest report is available via the following link (…insert link…). Recent examples of this work are as follows:

UN

- The UK was active in the UN in New York in co-sponsoring a resolution on Human Rights Defenders http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/590/67/PDF/N1159067.pdf?OpenElement that for the first time has language on the rights to freedom of association and assembly.
- Our activity throughout 2011 in support of individuals seeking to exercise their human rights, including the rights to peaceful assembly and
association, in countries in the Middle East and North Africa is well-
documented.

- We take part in Interactive Dialogues with relevant Special Procedures in
  the HRC and the GA. For example, the Interactive Dialogue on Cambodia in
  September 2011 during which we inquired about the view of the Special
  Rapporteur on how the Government of Cambodia would conduct the next
  period of consultations on
  the draft law on non-governmental organizations and associations.

OSCE

- ODIHR wrote to the Home Secretary in September 2011 about the London
  Riots and a temporary ban on marches in some London boroughs that had
  been badly affected by those riots. A copy of ODIHR’s letter and the reply
  from the Home Office [I have still not seen a copy of the reply but will chase
  again with the Home Office] is attached.
- The UK Delegation to the OSCE were in touch with the Head of ODIHR’s
  Human Rights Department in May 2011 to discuss how we might assist
  them in the development of their approach to freedom of peaceful
  assembly. ODIHR subsequently undertook a fact-finding visit Belfast in
  July 2011 and are expected to complete a report on practices in a number
  of participating States based on their various monitoring visits.
- The OSCE/ODIHR published a guide to freedom of peaceful assembly in
  2007, http://www.osce.org/odihr/24523 which refers (p57) to “One example
  of a useful training resource is the ‘Manual of Guidance on Keeping the
  Peace’ compiled by the national Association of Chief Police Officers
  (ACPO) in the UK”. This is publicly available at
  , and is updated as required by changes to legislation.

Council of Europe

- Under the Chairmanship of the United Kingdom, in December 2011 the
  Committee of Ministers adopted a Declaration on the protection of freedom
  of expression and freedom of assembly and association with regard to
  privately operated Internet platforms and online service providers.
- The UK plays an active role in the Committee of Ministers in promoting the
  full execution of ECHR judgments, including judgments on violations of the
  rights to freedom of peaceful assembly and of association.