



WRITTEN EVIDENCE OF BLACK PROTEST LEGAL SUPPORT UK

TO THE JOINT COMMITTEE ON HUMAN RIGHTS ON THE POLICE, CRIME, SENTENCING AND COURTS (“PCSC”) BILL

Introduction

1. Black Protest Legal Support UK (“BPLS”) is a non-profit organisation led by Black and Brown lawyers who act as legal observers and provide legal support to racialised protesters. We were set up in the wake of Black Lives Matter protests in the summer of 2020 to provide legal support to Black, Brown and Racialised groups (“BBRG”) protesting police brutality and racism in the UK.
2. We now have a network of over 100 legal observers across London, Manchester and Birmingham, many of whom are legally trained or qualified and who attend protests relevant to our core issues to independently monitor police conduct. We have a network of barristers and solicitors who provide pro-bono legal support to BBRG protesters in civil and criminal proceedings. We also contribute to policy interventions impacting on the right to protest, and the sharp impact of policing and the criminal justice system on BBRG communities.
3. Given our area of work and expertise, this response addresses the following question posed by the Joint Committee:

Are the proposed changes to the law governing public assemblies, processions and one-person protests necessary to protect those adversely affected by such activities? Do the proposals in Part 3 of the Bill adequately protect the right to peaceful assembly (Article 11 ECHR) and the right to free expression (Article 10 ECHR)?

A. Reduced thresholds, new protest related offences and harsher sentencing will stifle the right to protest

4. Articles 10 (freedom of expression) and 11 (freedom of assembly) of the European Convention on Human Rights (“the Convention”), taken together protect the right to protest. The right to protest is a fundamental right in any democracy.
5. Protests that cause inconvenience to others are covered under the ambit of Articles 10 and 11, as described by Laws LJ in *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23 at §43

“Rights worth having are unruly things. Demonstrations and protests are liable to be a nuisance. They are liable to be inconvenient and tiresome, or at least perceived as such by others who are out of sympathy with them.”

6. In *Kuznetsov v Russia* (application No 10877/04) the European Court of Human Rights echoed this sentiment at §44:

“As a general principle, the Court reiterates that any demonstration in a public place inevitably causes a certain level of disruption to ordinary life, including disruption of traffic, and that 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 is not to be deprived of all substance”.

7. BPLS believes that the proposed legislation, which lowers the threshold for police interference in protests and creates new offences and greater penalties for protest-related offending, will only act to stifle the right to protest. BPLS squarely opposes the implementation of the PCSC Bill.

8. Of note is Clause 55, a proposed amendment to section 14 of the Public Order Act 1986 which governs police powers to regulate public assemblies. BPLS is particularly concerned at the wording of the section, which enables officers to impose conditions that can and often do, effectively end protests, on the basis of *“noise generation”* and where it *“may cause such persons to suffer serious unease”*. BPLS strongly believes that these broad and vague terms have no place in the criminal law.
9. Similarly, BPLS opposes the proposed new offence of *“intentionally or recklessly causing public nuisance”*, which carries a maximum sentence of 10 years when tried on indictment. Particularly worrying is the definition of *“serious harm”* which can include *“serious annoyance or serious inconvenience”*.
10. BPLS strongly submits that the framing of these clauses in particular, and Part 3 of the Bill in general, cannot be viewed as either a necessary nor proportionate response and is contrary to common law and the freedoms protected under the Convention.
11. BPLS is also particularly concerned that the impetus for the new Bill is precisely the success and widespread support for recent protests. The Black Lives Matter protests have led to greater public awareness, media attention and increased scrutiny of the way in which policing impacts BBRG communities and young Black men in particular.
12. The “Kill the Bill” protests, drawing attention to the authoritarian aspects of this Bill itself, BPLS asserts directly led to a delay in the passing of the Bill in Parliament, which has enabled greater scrutiny, including this consultation.
13. BPLS is therefore particularly concerned about the timing of the new Bill, especially against the backdrop of the HMICFRS report, commissioned by the Home Secretary, and published in March this year, which outlined a need to: develop covert intelligence gathering methods, increased use of facial recognition technology at protests (which is discriminatory by design), and expanding stop and search *“to prevent serious disruption caused by protest”*.

Introducing legislation aimed at increasing policing powers belies a worrying trend and has the potential to create what was referred to in *Christian Democratic People's Party v Moldova* (Application no. 28793/02) as the “*chilling effect*” on the right to protest.

14. BPLS also raises concerns about the advent of new policing powers at protests, when the police have on a number of occasions acted unlawfully and in excess of current powers. In the case of *Jenny Jones & ors v Commissioner of the Police of the Metropolis* [2019] EWHC 2957 (Admin), a ban on the Autumn Uprising protests under s.14 POA was found to be unlawful. In the earlier case of *Mengesha v Commissioner of the Police of the Metropolis* [2013] EWHC 1695 (Admin), the requirement to provide personal details to police in order to be released from a kettle was also found to be unlawful.

15. BPLS legal observers have noted similar overreach by police. On 6 June 2020, in the first week of the BLM protests, police purporting to use s.50 Police Reform Act 2002 powers, kettled hundreds of protestors at Downing Street. Many young people, including two fourteen-year-olds, were held until the early hours of the morning. Despite the judgment in *Mengesha* and the clear wording of s.50 which means that it cannot be used as a blanket power, the police refused to allow protestors to leave unless and until they provided their personal details and agreed to be filmed from head-to-toe. Further and extensive abuses of power were documented by BPLS at recent Kill The Bill protests.

B. The PCSC Bill will have a disproportionate impact on Black, Brown and Racialised Group (“BBRG”) communities

16. The general rights enshrined in the Convention (such as Articles 10 and 11) “*cannot be interpreted in a vacuum but must be interpreted in harmony with the general principles of international law*”, including the International Convention on the Elimination of All Forms of Racial Discrimination: see *Neulinger v Switzerland* (2010) 54 EHRR 1087 (GC) at §131, endorsed by the Supreme Court in *Mathieson v Secretary of State for Work and Pensions* [2015] UKSC 47; [2015] 1 WLR 3250 at §42, §44. The right to protest is particularly important

for groups asserting “a *minority consciousness*”, including racialised groups challenging oppression (*Gorzelik and Others v. Poland* [GC], §92). As such, these groups receive heightened protection under Articles 10 and 11.

17. However, BPLS firmly believes that the vague language, expanded police powers, new offences and heavy penalties proposed under the PCSC Bill will clearly have a more significant and disproportionate impact on BBRG protestors, by further embedding the systemic racism already rampant in the policing of protests and in the criminal justice system.
18. The 2017 Lammy Review, and the 2020 update to the Review, ‘Tackling Racial Disparity in the Criminal Justice System’, exposed the stark reality faced by BBRG communities, and especially Black men, in the criminal justice system. Black people are more than nine times as likely to be stopped and searched when compared to white people; Black people are three times as likely to be arrested and young Black boys are nine times more likely to be given immediate prison sentences than their white peers, with over half of the children and young people in youth custodial institutions being from BBRG communities. BBRG communities were also 54% more likely to be fined under COVID Regulations than white people.
19. The same systemic racism plainly applies to BBRG people who are targeted, fined, arrested, charged and/or sentenced as a result of attending protests. Further, from our experience and observations, police aggression and violence is significantly greater at BLM and related protests and against BBRG protestors.
20. Police violence was rife at BLM protests in 2020. BPLS noted the aggressive arrests of three Black women at the Kill the Bill protest on 3 April, as well as brutality against other Black demonstrators – on the streets, in police vans and in police custody. The use of PAVA spray against protestors and legal observers at Parliament Square was particularly concerning during the COVID-19 pandemic. More recently, at Palestine and Colombia solidarity protests in London, we observed the donning of riot gear and the use of batons and shields

on mostly Muslim and/or racialised protestors, including children. Several were seriously injured, as were some of our legal observers.

21. This is in stark contrast to the way in which Extinction Rebellion protests have been policed, where protestors are mainly white, as noted by BPLS members who acted as legal observers or legal representatives for XR.

22. BPLS strongly believes that any expansion of police powers to interfere with protests, especially given the vague and broad language of the PCSC Bill, will only embolden the police to act with greater aggression and impunity against BBRG communities.

23. BPLS also highlights that in March and April, five BPLS legal observers were arrested at Kill the Bill protests. Three of the five were BBRG people. This is despite them being independent of the protest, volunteers and the UN Human Rights Committee making clear that legal observers *“[m]ust not face reprisals or other harassment... if an assembly is declared unlawful or is dispersed, that does not terminate the right to monitor.”*

24. The arrest of legal observers is a further example of the police abusing their current powers at protests and worryingly another mechanism through which the State seeks to act with impunity. As one officer said to a BPLS Legal Observer *“the law does not matter”*. This is the chilling effect in motion.

25. The PCSC Bill signals a major assault on the right to protest and a significant move to furnish authoritarian power. BPLS firmly opposes the implementation of Part 3 of the Bill, as well as its other racist and draconian provisions.

Black Protest Legal Support UK

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