

To: The Secretariat
Working Group on Parades
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From: Community Relations Council
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Date: 14th July 2010

RE: Consultation on Public Assemblies, Parades & Protest Bill (Northern Ireland)

1. Introduction

- a. The Community Relations Council (CRC) welcomes the opportunity to comment on the above consultation.
- b. CRC's aim is to lead and support change in Northern Ireland towards reconciliation, tolerance and mutual trust and promote sharing over separation. We work by promoting constructive and relevant dialogue, by actively supporting those taking real risks for relationship building, by acting as a practical bridge between groups in society and between the public, private, voluntary and community sectors and by promoting wider learning through developing better practice. Our overall aim is to lead and support change towards a peaceful, inclusive, prosperous, stable and fair society founded on the achievement of reconciliation, equality, co-operation, respect, mutual trust and good relations.

2. CRC position

- a. CRC believes that the fundamental challenge facing political life in Northern Ireland is to move from antagonism, with all of its associated fears, threats, violence, exclusion and discrimination to a peace based on real justice for all, recognition of the value of diversity and the contribution to be made by people from different backgrounds and trust. Above all, CRC is committed to a shared and better future for all.
- b. It is critical that the future of contentious parades and counter protests in Northern Ireland should be considered within this context. Although progress has been made, a number of parades remain sources of dispute and are a potential threat to peace, stability, prosperity and the creation of a shared and better future for all. The issue of parading and its associated problems is a

- concern not just for those parading and those protesting, but for the entire community and contested parades and protests are a symptom of much wider community relations problems and also a contributory factor to them. Furthermore, parades and protests have and still are dealt with against a cultural backdrop of division and antagonism, and the development of a law for parades and protests is basically a substitute for agreement. It is still focused on managing rather than resolving the wider issues
- c. CRC's response draws on our experience of supporting and working on issues relating to parades and protests; in particular our core grant and small grant schemes have invested money directly in mediation, research and broader conversations of cultural diversity e.g. Peace and Reconciliation Group (PRG), Mediation Northern Ireland, Ulster Band Association as well as Diversity Challenges. *Appendix A provides further information on the range of activities and interventions we have actively supported.*
 - d. Our interest in this consultation is also supported by previous submissions to the Strategic Review of Parades in 2007 and 2008, as well as an evidence session with the Northern Ireland Affairs Committee in relation to the Quigley report. These contributions are available upon request.

3. Human Rights

- a. CRC believes that it is the task of a democratic society to seek to ensure that the rights of everyone are upheld and respected at all times including the right to life and liberty, the right to privacy, the right to freedom of expression and of particular importance in this instance - the right of freedom of assembly. There is also a need to consider how the commitment made in the Belfast Agreement (1998) to an explicit right to freedom from sectarian harassment should also be taken into consideration in these cases.
- b. In spite of years of decision-making, the issue of the balance of rights to be applied in relation to parading remains contested. This suggests that future determinations should seek to create greater consistency and clarity around the issues of competing rights. While CRC hopes that all disputes can be resolved at local level, we are also convinced that local accommodation is best built when all parties are sure that agreements reached are just and fair and fit a framework of principle which is agreed and applies universally to all. While CRC does not believe that these matters can be resolved in court alone, there may well be a case for creating greater judicial and public clarity about when and how the various rights of the convention can and should be engaged in these matters. For this reason CRC believes that adjudications should be framed in a consistent and transparent manner in which the balance of rights applied in each case is explicitly identified.
- c. In conclusion, CRC believes that if government intends to introduce new legislation it must be centred around a human

rights framework based on the European Convention on Human Rights . this must be the basis for any new legislation relating to parades, protests and public assemblies. OFMDFM must guarantee the protection of these rights and that any adjudicating body and its processes must ensure all decisions and procedures are compliant with this legal framework.

4. Notification

a. Public assemblies

- i. CRC remains concerned about the extension of parades notification and adjudication to all public assemblies of over 50 persons. The European Convention on Human Rights protects the right to freedom of peaceful assembly in Article II (1) and qualifies the grounds for the imposition of restrictions in Article 11 (2)¹. Using Article 11 as a benchmark, CRC is unsure why the current legislation used for managing public processions and counter protests is being extended to include all forms public assemblies.
- ii. Internationally there are many variations relating to notification. According to analysis carried out by the Institute of Conflict Research (ICR) many countries do require advance notification for all forms of assembly, but there are also many types of exemption depending on the scale or the form of the Assembly. Furthermore, England, Wales and Scotland require notification of public processions but not for public meetings², and the Republic of Ireland imposes no legal requirement for advance notification for any public assembly.
- iii. CRC would like to see further clarification for the reasoning and evidence behind this decision. We are concerned at the lack of justified reasoning for this extension and believe this catch all legislation could be disproportionate.
- iv. Most public assemblies are not disputed and the majority will face little or no objections. There is a risk, that by extending the legislation to encompass all assemblies with more than 50 participants, it will create a cumbersome legal procedure for everyone yet will not deal with the underlying persistence of a sense that culture in Northern Ireland is treated as a zero-sum battle between competing and exclusive traditions. The decision to end culture wars is essential for a shared and better future-the decision to extend legislation to include

¹ **ARTICLE 11 ECHR:** Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

² The Public Order Act in England & Wales 1986 . http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1986/cukpga_19860064_en_1
Police, Public Order and Criminal Justice (Scotland) Act 2006: http://www.opsi.gov.uk/legislation/scotland/acts2006/asp_20060010_en_1
With the exception of gatherings at Parliament Square which currently requires notification, but which is currently likely to be repealed changed under the new Conservative/Liberal Democrat Government.

everyone is not a substitute for these key political and community decisions.

- v. CRC is concerned that the proposal to include all assemblies involving more than 50 people could have major unintended consequences - CRC is aware of many events which were previously spontaneous and would not require formal registration. Recently, the Council supported a public gathering to show support for community relations worker, Mary Kelly, whose home was attacked in North Belfast. Recently there was a widely supported; vigil for Bobby Moffett on the Shankill, and after the killings in Massereene and Craigavon last year, there were major peace rallies. Other recent events include the public assembly to condemn the attack on the humanitarian aid relief due for Gaza, the rally outside the Guildhall to support the bereaved families of Bloody Sunday, as well as countless rallies to oppose cuts and support for industrial disputes. CRC is unsure why there is a need to impose a regulatory framework on these events, which are both necessary and legitimate events for a democratic society; CRC is therefore uneasy about legislation which appears to extend the role of the criminal law into new areas, with potential consequences for community relations.

b. Participation threshold

- i. There is no clear rationale within the legislation or accompanying guidance notes for setting a figure of 50+ participants as the benchmark for notification. Given the rise of social networking sites this could prove very difficult for organisers leaving them open to possible legal action. CRC seeks further information as to the decision making process surrounding the yardstick of 50 +.

c. Notification period.

- i. Under the proposed legislation, the notification period for all public assemblies has been extended to 38 days from the current timeframe of 27 days. This seems unusually long especially when set against other European standards³.
- ii. CRC acknowledges the desire to maximise opportunities for dialogue and to facilitate various methods of intervention. We believe that these processes should take place at all times. Mediation is a crucial mechanism particularly in the context of disputed parades, but the resolution of these disputes must commence long before the 38 day process. According to the Institute for Conflict Research (ICR) most European countries have a notification period of no more than 7 days to facilitate this engagement process. We are concerned that the

³ Finland requires 6 hours, 15 days in Poland, 28 days in Scotland.

legislation should be framed to ensure a proper balance between the need to encourage dialogue and the requirement placed on all public assemblies for such a long period of notification.

d. Spontaneous Public meetings/assemblies

A flourishing and free civic society is an important element of a healthy democracy. Our concerns about elements of the proposals - including the extension to include public assemblies, the longer notification period, as well as the imposition of legislation on all assemblies involving more than 50 people- are to be understood as concerns about the potential to of the legislation to restrict the voice of civic society. While the Bill offers a number of late notification options and an emergency 3 day notification, CRC is concerned that the mechanism for spontaneous gatherings is limited, whereby an event can only take place if notification is given within 3 days of the proposed event for an extreme emergency situation or for some unforeseen event. Spontaneous gatherings are particularly important to CRC as it offers communities and wider society a space to oppose sectarian and racist conflict and attacks⁴. It is unclear from the Bill how these spontaneous non-notified events can and will be accommodated within the proposed legislation. It is also unclear how the organisers and participants of these public assemblies would be dealt with in the aftermath of such events.

5. Structures and Appointments

- a. Any body adjudicating cultural disputes will always find itself making decisions that are unpopular with some. The goal must be to reduce the number of disputes requiring formal adjudication. CRC is therefore strongly supportive of the tone of the proposals which emphasis local discussion and agreement and offer opportunities for formal mediation. However, in the absence of agreement on cultural issues here, CRC believes that any adjudication body must be based on the following principles:
 - Clear independence and impartiality
 - A membership drawn up through an open and transparent process
 - Broadly reflective the whole community.
 - Effective, efficient and value for money
- b. CRC believes that any new structures should have broad political support. This requires an impartial process, open public appointments and clear political accountability to the new devolved administration. We are concerned that this should not be confused with political interference in personnel or deliberations which might be seen to prejudice specific decisions.

⁴ Attack on Mary Kelly, Glandore Skegoneil. http://www.belfastmedia.com/yourletters_article.php?ID=1573

- c. The Bill sets out the structures for administering, regulating and adjudicating on public assemblies .We have ongoing concerns that the process for the appointment of the Appointments Panel and the Adjudication Panels has not been spelled out sufficiently clearly in the Bill. It is our view that appointments in this area should meet the highest standards of public appointments and consistent with OCPANI guidance. It is unclear if the guidance to be issued by FMDFM to the Appointments Panel will be similar to those in the Code of Conduct for Public Appointments.
- d. CRC agrees with the appointment of legal experts to assist the work of the adjudicating panel. This should clearly also require a knowledge of human rights in order to fulfil their task of advice to the adjudicating panels in relation to human rights.
- e. We are concerned that the current proposed structures will prove to be more expensive, less efficient and more administratively burdensome than existing arrangements. This is a serious consideration when proposing reform in the current financial climate and CRC would like to know if OFMDFM carried out a regulatory impact assessment in relation to quantifying benefits and costs.
- f. We would also like clarification on the status of the PAPPB . will it be classified as a Non-Departmental Public Body?
- g. Finally, the appointments process should consider the UN Security Council resolution 1325 in relation to increasing the participation of women at decision making levels in conflict resolution and peace building⁵.

6. Procedures

- a. The Consultation document sets out a broad description as to how the adjudicating panels will carry out their proceedings (Clause 22). Any adjudication mechanism should have the desirability of being compliant with Article 6 of the ECHR⁶ in relation to a fair trial.
- b. However, Clause 22 also indicates that OFMDFM may make rules about the proceedings of the PAPPB. It is important that any further rules or guidance relating directly to the decision making process is made available at this time. Altering procedures following the Bill's enactment could undermine support for any future decisions.

7. Statutory Code of Conduct

⁵ The current membership of the Parades Body has one female representative and six male representatives.

⁶ ARTICLE 6 (1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
<http://www.hri.org/docs/ECHR50.html#P1.Art6>

- a. The consultation pack includes the Code of Conduct section from the Working Group, and refers to a number of issues which are of potential interest to CRC e.g. conduct at sensitive locations, paramilitary dress and symbols and the specific reference to sectarianism.
- b. Regrettably, the final code of conduct has just been released for public consultation (was released on 23rd June 2010). CRC will comment on the Code of Conduct in due course.
- c. However, despite the delay in this publication, CRC believes it is important that the Code is informed by international human rights standards and would urge the development of a code that is compliant with the following protections:
 - **Council of Europe, Framework Convention for the Protection of National Minorities, Section II, Article 6**
 - The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.
 - **UN International Convention on the Elimination of All Forms of Racial Discrimination, Part I, Article 7**
 - States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.
 - **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 1:**
 - 1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity;
 - 2. States shall adopt appropriate legislative and other measures to achieve those ends.
- d. It is unfortunate that there is no direct reference to Bands and CRC strongly advises direct engagement with the Bands community. They are a central part of public processions, and it would be beneficial to engage and disseminate good practice from models on the ground. Again CRC is willing to assist in the provision of this information.

8. Mediation

- a. CRC believes that mediation has a critical role to play in resolving disputes. It is our view that mediation should not just be applied in extreme circumstances and centred on the containment of emergencies but can be applied throughout the year to assist dialogue and negotiation around issues of parades and the parading tradition in Northern Ireland.
- b. The current proposals provide a range of opportunities for intervention and dialogue to address objections to particular parades/public assemblies and CRC is supportive of these measures. However the self refer clause (clause 25) is an area of concern in that it essentially provides an opt out from dialogue mechanism for both organisers and objectors, instead going straight to the adjudication process. There may be circumstances where relationships between organisers and objectors are poor, therefore making dialogue difficult. At the same time, consistent refusal to engage with objections may constitute an unwillingness to recognise the rights of others and CRC is pleased that this may be taken into consideration. It will be particularly important to examine the reasons for non-cooperation, especially if there is evidence of persistent sectarianism.
- c. CRC supports minimal enforcement and arbitrary regulation and wants to see participatory regulation, compromise, negotiation and increased understanding as to basis for moving forward

9. Mediators

- a. It is unclear from the legislation and guidance notes how the mediators will be appointed. It is crucial that mediators are both trained to a professional standard and acceptable to communities as honest brokers, and they should be appointed through an open and transparent process, compliant with advertising standards and accessible to a wide range of qualified mediators.
- b. Good quality training for mediators should be provided alongside a robust monitoring and evaluation service to keep abreast of issues, assess impact and constantly improve on service.
- c. CRC supports programmes and projects at local level which could further support this work through the delivery of year round conflict transformation and reconciliation programmes. Our role in supporting and monitoring approved Council Peace Plans could also provide an opportunity for a joined up and efficient approach.

10. Community Engagement

- a. Local communities are a crucial element in this negotiation process. CRC believes that the legislation should commend structures for building support and understanding at a community level through a partnership approach which clearly involves the community in the process. Currently, this element of wider community engagement and discussion is completely absent from the proposed draft Bill and CRC strongly recommends its

inclusion, preferably as a statutory duty for the PAPPB to undertake training and dialogue with communities, either directly or through a 3rd party. It should also be included in the guidance for the PAPPB, which is to be drafted by the First and Deputy First Minister. This will help bring substance to the Bill's section on dialogue.

11. Monitoring

- a. CRC strongly believes that the monitors should be both independent and required to adhere to a Code of Conduct similar to that of the Network of Independent Monitors in the Cape Town Model⁷. However, again there is too little information on the selection process, and what experience of training will be required.

12. Consultation Process

- a. Given the impact parades and protests have had on communities and wider society, CRC is disappointed that OFMDFM have not engaged in a wider consultation process. CRC is aware that the Parades Working Group carried out their own consultations with various stakeholders in order to produce the draft legislation, but there is little information as to which groups, organisations or individuals were consulted with⁸.
- b. CRC would like to have seen a series of public events, similar to those undertaken by the Department of Environment when it consulted on Planning Reform and the Department of Enterprise, Trade and Investments' recent stakeholder meetings on its Tourism Strategy. This current process seems flawed given that Parades and Protests are hugely important when it comes to delivering the vision of a Shared and Better Future.
- c. OFMDFM as a designated public body must submit the proposals for an equality screening process; by not undertaking this process OFMDFM is in breach of its commitment in its equality scheme. We cannot believe that this process would not reveal a number of important issues. CRC calls upon OFMDFM to undertake this screening as a matter of urgency. In order to create trust and confidence in any new structure or process OFMDFM should ensure maximum compliance with Section 75.

⁷ these include:

- be committed to the principles of the UN Declaration of Human Rights;
- be committed to independent monitoring;
- be accessible to all parties being monitored;
- pledge to promote peace and work to end violence;
- be committed to non-violent action and methods of monitoring;
- report truthfully and accurately on situations;
- strive to act confidently, calmly and diplomatically;
- display sensitivity and empathy for the vulnerability of victims of violence;
- respect the need for confidentiality;
- not publicly display any party preference (in word, by action or by wearing party badges or clothing) while monitoring;
- respect the role of other structures dealing with conflict mediation/resolution.

⁸ <http://www.theyworkforyou.com/ni/?id=2010-03-22.6.1>

- d. The legislative nature of the consultation document makes it particularly difficult to read and follow. This has the potential to exclude individuals and groups from the consultation process.

13. Young People

- a. CRC believes that special attention should be paid to the role of young people in confrontation and disputes, and at sensitive areas. Both Desmond Bell and Sarah Nelson highlighted that young people in Northern Ireland, particularly in working class areas, are seen to play an active and increasingly central role in the preservation of traditions and thus have become the guardians of tradition⁹.
- b. CRC believes that it is vital to engage with young people groups and organisations, and specifically young people themselves. Too often young people are caught up at parade flashpoints and blamed for creating tension. OFMDFM should also take account of its international obligations to young people under the UN Convention on the Rights of the Child¹⁰. It is important to engage with this group in a meaningful manner as their input would be invaluable. Minimally, young people should have been actively included in this consultation process and it is unfortunate that OFMDFM did not use the services of Participation Network to engage with young people¹¹, particularly as they are directly funded by government for these purposes.

14. Holistic and ongoing approach

- a. CRC understands the pace of these discussions and that there is no quick fix solution to the parading or the wider community relations problem.
- b. Government should not be satisfied with the containment of potential violence each year with a new agreement being met but no long term solution found. Work must be ongoing throughout the year in relation to the most marginalised, angry, hurt or disenfranchised and not just between community and group leaders. The problem should not be isolated and managed to the point that contention becomes acceptable or normalised but rather, an ongoing conflict transformation and reconciliation action plan should developed, delivered and constantly reviewed with the involvement of all key stakeholders from community groups through to central and local Government.
- c. We must also be mindful how new parades and newly contested parades cause disruption where demographic or political balances have shifted to a new constellation, causing new rivalries and power struggles to emerge on the streets.
- d. Finally, whatever new parading legislation emerges from this consultation it is vital to consider how it contributes to the wider

⁹ Sarah Nelson, *Ulster's Uncertain Defenders: Loyalists and the Northern Ireland Conflict*, Published by Appletree Press, Belfast; Desmond Bell *Acts of Union: Youth Culture and Sectarianism in Northern Ireland*, 1990.

¹⁰ UN Convention on the Rights of the Child <http://www2.ohchr.org/english/law/crc.htm>

¹¹ Participation Network is funded by government to engage with young people on government consultations. They have not been asked to carry out any consultation exercises on the draft Public Assemblies, Parades and Protest Bill.

developments in community relations work. In its first Programme for Government, the Executive committed itself to promoting and building a Shared and Better Future for everyone. Currently OFMDFM is finalising the new Cohesion, Sharing and Integration Strategy and we expect to see actions to deal with cultural disputes. There are many other developments i.e. the Victims and Survivors Service, and the broader question of how we deal with the legacies of the conflict which all intertwine with one another. This legislation must not, and will not happen in isolation from other policy developments. It would therefore be wise to engage on a cross-departmental basis to ensure joined up, parallel thinking on the various approaches and interventions.

15. Conclusion

Parades and protests continue to act as the lightning conductors for our cultural and political disputes. Groups seeking to exploit community divisions or to create violent interfaces with the police use parades and protests as their opportunity. CRC therefore welcomes all attempts to reach resolution on this matter. We know too well that reconciliation and resolution are not one-off events. Mediation is one tool to deal with contested public processions, and a willingness to engage is an indicator that we are moving forward.

At the same time, it is critical that we seek to resolve the deep underlying issues which continue to produce cultural antagonism. Cultural displays need to be entirely free of intimidation and threat to any person or community. Protests need to be peaceful and based on a respect for the people on parade and their rights. Freedom of speech and assembly should be a reality which everyone enjoys throughout Britain and Ireland, without fearing that their safety or their fundamental rights are at risk.

Too often, controversies over parades and protests reveal our lack of engagement and reveal the poor relationships we have with one another. It also acts as a symbolic measure of whether we are equal partners in society.

CRC welcomes renewed political effort to resolve the issues of parades and protests. However we do have ongoing concerns that in this attempt a number of important issues have been raised which require further more detailed attention:

1. The extension of legislation to all public assemblies is fraught with risk for broader civil liberties and risks unnecessary confrontation between the authorities and civil society. Bringing other issues into the realm and scope of legislation may have an internal logic, but there is a risk that it is a mechanism to avoid a more fundamental resolution of the political and cultural issues at stake in parades and protests.

2. There is a risk that the current proposals have the potential to be unnecessarily complex and costly. We are concerned that the system should not slow down the process due to the level of administrative work required.

With these concerns in mind, we recommend that further consideration be given to the proposed legislation and further discussion on encouraging interdependence and mutual respect for cultural diversity. CRC would be keen to facilitate this discussion as part of a determined effort to build a shared and better future. The imminent policy on Cohesion Sharing and Integration may offer an opportunity to further this debate. If parading is to be resolved, then success in achieving political stability must be matched by a new climate of accommodation and tolerance which impacts on public space, cultural celebration and our cultural and educational institutions.