WRITTEN EVIDENCE TO THE NI ASSEMBLY AD HOC COMMITTEE ON THE BILL OF RIGHTS FROM THE EQUALITY COALITION CO-CONVENERS

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1. The Equality Coalition is co-convened by the Committee on the Administration of Justice (CAJ) and UNISON. It is a network of over 90 non-governmental organisations and trade unions that cumulatively work across all nine equality categories within Section 75 of the Northern Ireland Act 1998 (as well as on other protected equality grounds). The Equality Coalition provides a forum for unity between multiple sectors when campaigning for equality. The Equality Coalition has a long track record of campaigning for the full implementation of the rights-based commitments of the peace agreements, including the Bill of Rights. Many member groups of the Equality Coalition have a long engaged on the Bill of Rights, including active participation in the Bill of Rights Forum and other process.

2. In April 2019 the Equality Coalition issued a '*Manifesto for a Rights Based return to Power Sharing*' in the context of the ongoing absence of the Stormont institutions. This Manifesto recalled that the Bill of Rights and other key rights-based commitments in the peace agreements were safeguards to counter and prevent abuses of power, discriminatory decision making and rights deficits. We highlighted that the Executive had collapsed in the context of such safeguards not having not been implemented, and were at a risk of a further collapse if this remained the case. The Bill of Rights would underpin the power sharing institutions on a more sustainable footing.

3. It is often lost that the Bill of Rights is to provide a practical and enforceable baseline for well-established rights many of which have long already committed to by the UK as a State Party to both the Belfast/Good Friday Agreement (GFA) and treaties within the UN and Council of Europe human rights systems. The role of the Bill of Rights is as core safeguard over the exercise of Executive and legislative power in the same manner as constitutional provisions in other jurisdictions, or indeed the Human Rights Act 1998.[1]

4. It is notable that the Bill of Rights could have prevented many of the issues that de-stabilised power sharing and contributed to its collapse (beyond RHI). This includes legislation and policy that would not have been lawful with the Bill of Rights in place. It also includes the diversion of Executive business into repeated attempts to enact rights-based provisions (many blocked from previous agreements) that *would already have been in place* (or already required as a matter of domestic law) had the Bill of Rights been enacted.

5. It is worth noting that examples of offending decisions encompass those taken by the UK Government as well as devolved institutions. This itself highlights the ongoing relevance of the GFA provision that the Bill of Rights be provided for in Westminster and not Assembly legislation. This is given the risks an Assembly bill would restrict the scope of the Bill of Rights to largely devolved competence, thus exempting actions taken by the UK Government from the scope of the Bill of Rights.

[1] The Human Rights Act 1998 itself is the vehicle implementing the GFA commitment to incorporate the European Convention on Human Rights (ECHR) into Northern Ireland law.

6. It is also worth recalling the intended link between the Petition of Concern and the Bill of Rights. The Petition, provided for in the GFA as a safeguard to ensure all sections of the community are protected, was expressly linked to scrutinising key decisions against the provisions of the Bill of Rights and ECHR. It was not intended to be a political veto that could be used to block rights and equality provisions. The Bill of Rights would also not prevent Ministers from discharging functions within the remits of their Departments without needing approval in the broader Executive. Rather the Bill of Rights would only regulate Executive power to a minimum floor, precluding only actions that breached recognised rights.

7. This is how the devolved institutions were supposed to operate under the GFA given the particular circumstances of Northern Ireland. The framing of the rights to be included can be seen as preventing a recurrence of the issues that led to the untenability of the old Stormont Parliament. It is perhaps not surprising that in the absence of such a core safeguard such patterns returned. We welcome therefore the establishment of a process to put the Bill of Rights back on the agenda.

8. We retain concerns that some discussions on the Bill of Rights are still characterised by basic misunderstandings as to the likely implications of its provisions. This has been the case particularly in relation to economic, social and cultural rights (ESCR) which are still at times influenced by an 'exceptionalist' approach that insists ESCR cannot be enshrined in the legal framework as this would constitute an undue shift between the separation of powers. This is despite the ESCR rights in question operating in many other jurisdictions, and the rights in question largely already having been committed to by the UK as a matter of international law.

9. The second area of misconception tends to focus on misconstruing the nature of ESCR rights themselves. Take the example of the 'right to housing'. Contrary to popular myth this does not require the State to build housing for the entire population or otherwise provide everyone with a house. Such provision would neither be practical nor necessary. What the 'right to housing' does do is place positive obligations on states to take reasonable steps to prevent homelessness, provide equal and non-discriminatory access to adequate housing and to focus on those most in need. Whilst there are some basic immediate obligations in general such ESCR are to be 'progressively realised' over time. The right to housing also places 'negative' obligations on public authorities to prevent undue interference in the right to housing, for example by obstructing housing being provided in an area due to most persons likely to live in them being from an alternate community background. It would cover failure to provide housing to meet the identified objective acute housing need of a particular group (e.g. Catholics, Travellers, former service personnel, refugees) on grounds it would be 'politically contentious' or 'bad for good relations', or subjecting such provision to 'permission' from an alternate communities representatives. It would offend the right to housing not to build houses in a particular area as it may affect the results of an election ('gerrymandering'), to provide public housing where it is least rather than most needed, or to retain peace lines in place to prevent 'the other' taking up housing on the other side of where it had been situated. These issues relate closely to the 'particular circumstances of Northern Ireland' where actual and threatened paramilitary intimidation and undue political interference continue to shape housing provision. At present there is no legally enforceable right to make the

GFA 'right to freely choose one's place of residence' or the 'right to freedom from sectarian harassment' a reality as regards housing provision.[2]

10. The latter part of our evidence will focus on a number of examples of how the Bill of Rights would, if in place, have precluded a number of problems in recent years that impacted the sustainability of the institutions and provisions of the peace settlement. References to the Bill of Rights below largely refer to content that would reflect the advice in 2008 by the Northern Ireland Human Rights Commission ('the NIHRC'). We are also conscious of significant changes since this advice was delivered, not least the context of Brexit. The forthcoming ending of the Brexit transition period sets a course for removal of requirements to follow EU standards across a range of areas, particularly in areas of equality and workers' rights (subject to the provisions of Article 2 of the NI Protocol to the UK-EU Withdrawal Agreement on 'non-diminution' of some GFA rights). Whilst some provisions will be initially retained they can be subject to amendment or repeal outside of the EU framework. To date EU law has provided the only basis for a legal underpinning for some rights that were to be contained in the Bill of Rights. The removal of this provides further urgency to incorporate such provisions in the Bill of Rights itself.

11. A second significant change since the GFA, and the NIHRC advice, has been in demographics whereby we have moved towards a situation whereby a simple majority-minority framing no longer holds. The NIHRC advice, faithful to an explicit 'parity of esteem' provision within the GFA provided for a right whereby "*Public authorities must fully respect, on the basis of equality of treatment, the identity and ethos of both main communities in Northern Ireland*." The NIHRC added an important qualification that "*No one relying on this provision may do so in a manner inconsistent with the rights and freedoms of others*" reflecting that such a provision should also respect the expressive rights of, among others linguistic and ethnic minorities. In general, as we have always pointed out from the outset the 'equality of treatment' provision protects both 'main communities.'

Citizenship and Equality of Treatment Provisions of the Bill of Rights, and Brexit

12. The NIHRC recommended the incorporation of a provision in the Bill of Rights to ensure: *The right of the people of Northern Ireland to hold British or Irish citizenship or both in accordance with the laws governing the exercise of this right, with no detriment or differential treatment of any kind. This right would not be affected by any future change in the status of Northern Ireland.*

13. Had this provision been in place it would have most notably precluded the imposition of a 'hard Brexit'[3] on Northern Ireland. EU free movement law to date has been the underpinning basis to ensure equality for British and Irish citizens in NI across a vast range of entitlements and provision, as well as EU citizens' rights for free movement

[2] A standalone provision on non-discrimination, without also being able to rely on a substantive right to housing is insufficient to effectively address the above matters. Both were advised to be included in the Bill of Rights, as was a right to be protected against violence and harassment on any protected ground of discrimination, which reflects broader patterns of discriminatory intimidation through other forms of racism and homophobia, rather than solely focusing on sectarianism.

[3] A 'hard Brexit' in this context refers to a Brexit that does not retain the provisions for EU rights linked to free movement, either across the UK or at least in some bespoke arrangement for Northern Ireland.

across the EU. Without this, as things stand, British citizens in NI face detrimental and differential treatment compared to Irish citizens who retain EU citizenship and basic rights to free movement to work etc elsewhere in the EU. At the same time Irish citizens in NI are placed at in a precarious provision compared to British citizens in relation to entitlements within NI that may now or in future be subject to citizenship restrictions. To date EU free movement law has underpinned legal guarantees of equality of treatment in NI for Irish citizens. At present it is only to be replaced with largely vague and unenforceable declarations regarding reciprocal rights within the Common Travel Area.

14. A second pressing issue relates to the post-Brexit arrangements in relation to freedom of movement *of people* in and out of NI, and in particular the preclusion of passport controls on the land border or Irish sea journeys. The (pre-Brexit) NIHRC advice is limited to seeking incorporation of a variation on an ECHR protocol providing for freedom of movement within the UK. The Bill of Rights could be strengthened by explicitly precluding passport controls in and out of NI. At present only non-binding commitments have been made not to introduce passport checks on the land border.

15. Returning to the citizenship rights provisions particular problems of GFA compliance have been created by the Home Office 'hostile environment' decision to treat almost all persons born in NI as British for statutory purposes. This decision, well known due to the challenge in the *DeSouza* case, was expressly taken to prevent NI-born Irish citizens exercising EU rights tied to Irish citizenship (namely rights to be joined by close family members). This led to the extraordinary position of the UK Home Office suggesting to persons of NI that they renounce British citizenship should they wish to exercise the rights in question.[4] These problems could not have arisen had the Bill of Rights citizenship provisions been in force.

Minority language Rights

16. A further 'touchstone' issue for the sustainability of the institutions has been the implementation of commitments and the frameworks in the peace agreements for the Irish language. The decision to cut the modest Líofa Grant scheme is known for its direct role in the collapse of the devolved institutions in 2017. There were however also other failures to comply with duties towards the Irish speaking community and there are a range of examples of policy decisions that would have been untenable and challengeable had the Bill of Rights been in place.[5] This includes decisions by a number of district Councils to place significant obstacles in providing bilingual English-Irish street signage.

[4] In response to the *DeSouza* case the Home Office have legislated for a temporary scheme allowing (reflecting the equality of treatment provisions) for both British and Irish citizens who are NI born to exercise the family reunion right. However, this provision is time limited and due to end with Brexit, and the UK is yet to amend its citizenship laws in line with the GFA (for which NIHRC has provided a legal blueprint).

[5] Whilst the Bill of Rights, under the most recent NIHRC advice, provided limited provision for minority language rights, it did include a duty which would have made the provisions signed up to by the UK for Irish and Ulster Scots under the (Council of Europe) European Charter for Regional or Minority Languages (ECRML) directly enforceable, as well as advising 'language' be added to the protected grounds in anti-discrimination legislation.

17. Some Stormont Department's also adopted 'single language' policies (i.e. 'English-only' policies) to remove Irish language provision, that would also have been unlawful under the Bill of Rights.

18. An example from the short-lived two-party Executive that took up office in May 2016 is provided by in the Department of Education, which had previously adopted a trilingual branding inclusive of English, Irish and Ulster Scots and had an extensive Irish language policy providing broad provision in line with international standards. Within a month however the policy had been subject to review and an entirely new draft 'languages policy' had been produced. No consultation or equality screening took place and no records were kept as to what prompted the review and re-writing of the policy. The Department stated that the new policy changed the language for the administration of the department's functions from English and Irish to 'English only' and a monolingual logo was adopted. It received Ministerial approval in July. Before it was published in September 2016 a further amendment was made to remove a commitment (referencing the statutory duty to promote Irish medium education) for certain official documents to be provided to Irish medium schools in Irish. Consequently material that had already been translated into Irish for Irish medium schools (the school omnibus survey) had "to go in English only."

19. The above example demonstrates the extent to which standards that are not directly legally enforceable – as they would be in a Bill of Rights - can risk being bypassed.

Housing and social protection policy

20. There are a broad range of examples of controversial macro and micro housing policy that could have been more easily and effectively challenged had the Bill of Rights been in place. The issue of ongoing issues of housing inequality and need, in particular in north Belfast, have gained international human rights attention.[6]

21. One example of strategic housing policy to this end concerned the proposed shake up of housing policy by the Department of Social Development (DSD) in 2012 and a concurrent regeneration scheme known as the Housing led-regeneration or Building Successful Communities policy. It is notable that the criteria for choosing areas, rather than focusing solely on indicators of housing need, included areas that had: "significant levels of empty properties", "experienced a decline in housing demand" and were in "proximity to places where there is housing need." The Equality Commission investigated and concluded DSD had breached its equality scheme as a result of the programme, yet this is a far more limited remedy than could have been provided for by the Bill of Rights.

22. In relation to individual policy decisions, likely to form part of a broader 'informal' pattern, an example is provided by the response of Housing Executive to a request from a Housing Association for support for a development on the Hillview site in north Belfast, an area where there is a high level of housing need for Catholic families. The response was to decline support until a pre-requisite 'political and community

[6] For detailed information see Participation and Practice in Rights (PPR) 'Equality Can't Wait' 2013 (Belfast: PPR). Dr Robbie McVeigh 'Sectarianism: Key Facts' 2019 (Belfast: Equality Coalition).

agreement' was obtained. Essentially a political veto was granted over housing despite clear need.[7]

23. Finally, a further policy area that drove the Executive to the brink of collapse during a prior mandate was the implementation of social security cuts under the UK government's welfare reform programme. Whilst the Bill of Rights itself would not prevent amendments and changes to the social security policy framework per se, the enshrinement of rights to social security, an adequate standard of living and against destitution within a Bill of Rights, would protect against regressive steps that arbitrarily or unfairly deprive individuals of support, or subject persons to destitution.[8] There are significant elements of the 'welfare reform' legislative provisions that reach this threshold and thus the Bill of Rights would have provided a binding legal framework through which changes would have had to comply with.

24. In summary, the above provides a flavour of policy decisions that could have been addressed through the framework provided by the Bill of Rights to the benefit of the rights holders in question, but also to the sustainability of the power-sharing institutions.

October 2020

[7] See Dr Robbie McVeigh 'Sectarianism: Key Facts' 2019 (Belfast: Equality Coalition), p40.

[8] The NIHRC advised the Bill of Rights should incorporate a provisions that: "Everyone has the right to social security, including social assistance, social insurance and pension. Public authorities must take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right.", "Everyone has the right to an adequate standard of living sufficient for that person and their dependents. Public authorities must take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right.","No-one shall be allowed to fall into destitution."