

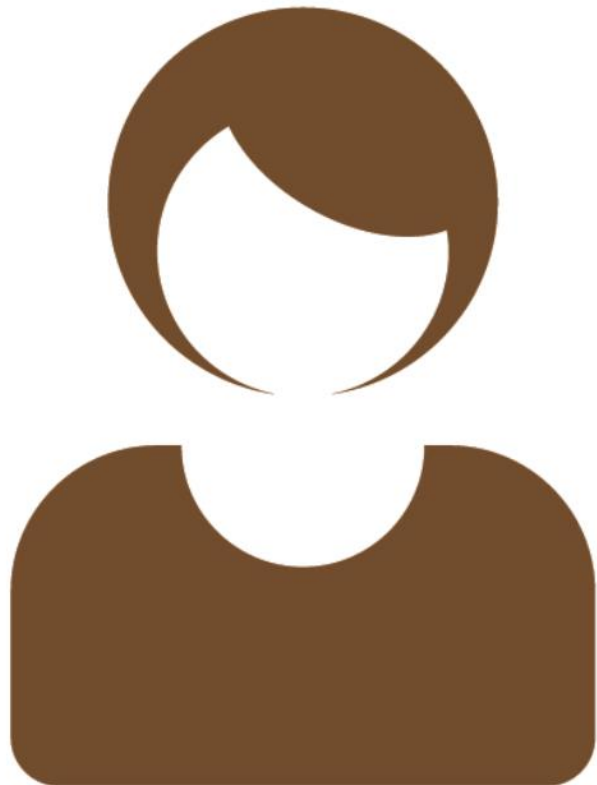


**Submission to the Committee on the on the Elimination of All  
Forms of Discrimination against Women**

**Pre-Sessional Working Group**

**June 2018**

[www.humanrightsconsortium.org](http://www.humanrightsconsortium.org)



*“We work towards a human rights based Northern Ireland.”*



## The Human Rights Consortium

The Human Rights Consortium is a not for profit coalition of over 160 member organisations from a range of community and voluntary grassroots groups, NGOs, charities and Trade Unions, drawn from all sections of the community and all parts of Northern Ireland. We work together towards a human rights based Northern Ireland.

To achieve this goal, we work to enhance understanding, communication, cooperation and campaigning opportunities on human rights issues between members of the Consortium, civil society and the public generally.

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## Membership of the Human Rights Consortium

- Action for Community Transformation
- Action on Elder Abuse Northern Ireland
- Action on Medical Negligence Association
- ADD-NI Children's Charity
- Advice NI
- African And Caribbean Support Organisation Northern Ireland
- Age NI
- NI Alternatives
- Amnesty International
- Arthritis Care NI
- Autism NI
- Aware Defeat Depression
- Ballymacarrett Arts and Cultural Society
- Ballynahinch Support Group
- Belfast & District Trades Council
- Belfast Carers' Centre
- Belfast Conflict Resolution Consortium
- Belfast Feminist Network
- Belfast Interface Project
- Belfast Unemployed Resource Centre
- Beyond Skin
- British Deaf Association
- Bryson An Munia Tober
- Cairde
- Cara- Friend
- Carers Northern Ireland
- Carers Trust Northern Ireland
- Carrickfergus Community Forum
- Centre for Global Education
- Changing Faces
- Charter NI
- Children in Crossfire
- Childrens Law Centre
- Chinese Welfare Association
- Citizens Advice Bureau
- CO3
- Committee on the Administration of Justice
- Community Arts Partnership
- Community Development & Health Network
- Community Dialogue
- Community Foundation for Northern Ireland
- Community Relations Forum
- Community Transport Association (CTA)
- Confederation of Community Groups
- Conference of Religious of Ireland
- Conradh na Gaeilge
- Contact A Family
- Conway Education Centre
- Corrymeela Community
- COSTA
- Council for the Homeless (NI)
- CRAIC NI
- Destined
- Disability Action
- Disabled Police Officers' Association
- Early Years
- East Belfast Survivors of Suicide
- Ely Centre
- Employers For Childcare
- Engage with Age
- EPIC – Ex Prisoners Interpretive Centre
- European Movement NI
- Family Immigration Alliance
- Family Planning Association
- Focus - The Identity Trust
- Forthspring
- Foyle Down Syndrome Trust
- Foyle Women's Information Network
- Friends of the Earth
- Glenshane Community Development Ltd.
- Good Shepherd Congregation
- Greater Shantallow Area Partnership
- Groundwork NI
- Guide Dogs for the Blind
- Hands That Talk
- HERE NI
- Hope 4 ME & Fibro Northern Ireland

- Housing Rights Service
- Huntingtons Disease Association
- Include Youth
- Indian Community Centre
- Inspire
- Integrated Education Fund
- Interaction Belfast
- Irish Congress of Trade Unions (NIC)
- Jigsaw NI
- Law Centre (NI)
- Learn and Grow
- Ligoniel Improvement Association
- London Irish Abortion Rights Campaign
- Lower Castlereagh Community Group
- Making Women Seen and Heard
- Men's Advisory Project (MAP NI)
- Mencap
- Migrant Centre NI
- Mindwise
- Newry & Mourne Co-op
- Nexus Institute
- NI Newpin
- NICRAS
- NO CIRC NI
- North West Community Network
- North West Forum of People with Disabilities
- Northern Ireland Anti-Poverty Network
- Northern Ireland Council for Integrated Education
- Northern Ireland Council for Racial Equality
- Northern Ireland Council for Voluntary Action
- Northern Ireland Humanists
- Northern Ireland Mixed Marriage Association
- Northern Ireland Public Service Alliance (NIPSA)
- Northern Ireland Rural Women's Network
- Northern Ireland Women's European Platform
- Northern Ireland Youth Forum
- Northern Visions
- NUS/USI
- Omagh Ethnic Communities Support Group
- Palestine Aid
- Parenting NI
- Pat Finucane Centre
- Peace People
- PILS Project
- POBAL
- Positive Futures
- Positive Life (formerly the HIV Support Centre)
- PPR Project
- Queerspace
- The Rainbow Project
- Real Network
- Rights in Community Care
- Rural Community Network
- Save the Children
- Signature
- Simon Community Northern Ireland
- South Belfast Seniors Forum
- South Tyrone Empowerment Programme
- St Columb's Park House
- Star Neighbourhood Centre
- Strathfoyle Women's Centre
- Tar Isteach
- TESOL Project
- Training for Women Network
- Ulster Teachers' Union
- UNISON Northern Ireland
- Unite the Union
- Upper Springfield Development Trust
- Victim Support
- Waterside Womens Centre
- WAVE Trauma Centre
- West Against Racism Network
- West Belfast Partnership
- Willowbank Ltd.
- Windsor Women's Centre
- Women in Business NI
- Women into Politics
- Women's Aid Federation Northern Ireland

- Women's Centre (The) Derry
- Women's Information Northern Ireland
- Womens Resource and Development Agency
- Women's Support Network
- Workers Educational Association
- Youthnet

## 1. Participation in UN human rights monitoring mechanisms

1. Due to the nature of devolution in the United Kingdom, many of the issues covered by international human rights treaties, and in particular the topics covered by Concluding Observations and Recommendations fall within the responsibility of the devolved assemblies in Scotland, Wales and Northern Ireland. While in practice the devolved governments handle much of the day-to-day realisation of rights, it is important to note (particularly in the absence of devolved government in Northern Ireland) that the United Kingdom government at Westminster has the ultimate responsibility for ensuring compliance across the UK with international human rights treaties,<sup>1</sup> and the requirements that flow from them.
2. However, State Party Reports for these international monitoring mechanisms tend to focus predominantly on England, to the detriment of the devolved regions. Northern Ireland in particular is very poorly represented in these reports. The continual failure to provide proper reflection on the status of these recommendations for Northern Ireland is a serious flaw in the UK's current reporting process and represents a failure in its human rights responsibilities for the devolved regions of the UK and at the United Nations.
3. Compounding this lack of representation, as the Committee is no doubt aware, Northern Ireland has not had a devolved government since it fell in January 2017. Talks aimed at restoring a devolved Executive have repeatedly ended in failure. Despite this and despite a reassurance to the Committee from the UK Government,<sup>2</sup> the Government Equalities Unit failed to include Northern Ireland in their 'targeted engagements'<sup>3</sup> for the preparation of the State Party Report.

The Committee may consider asking:

How does the state party plan to ensure that Northern Ireland, and particularly the input from women's NGOs in Northern Ireland, are included in all stages of the CEDAW reporting process

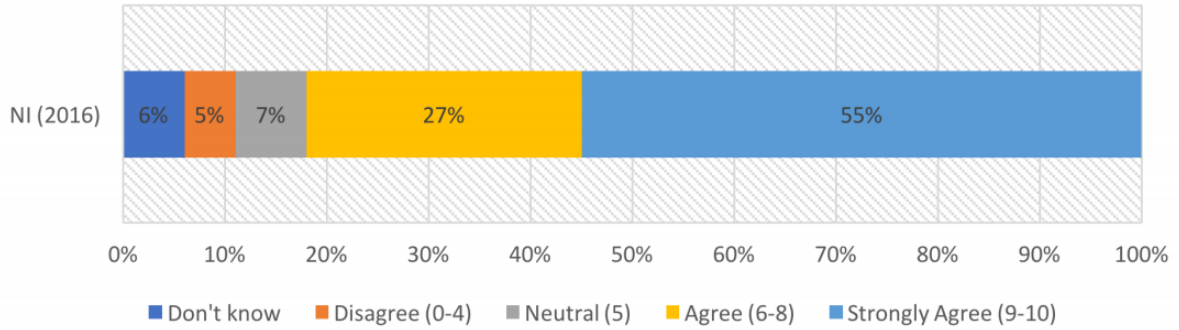
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<sup>1</sup> Article 26(2) of the Northern Ireland Act (1998) states, "If the Secretary of State considers that any action capable of being taken by a minister or Northern Ireland department is required for the purpose of giving effect to any international obligations, of safeguarding the interests of defence or national security or of protecting public safety or public order, he may by order direct that the action shall be taken."

<sup>2</sup> Letter from Karen Pierce CMG (Ambassador and Permanent Representative to the UN and Other International Organisations, Geneva) to Jakob Schneider (Secretary, CEDAW) dated 29 November 2013 which at point 7 reads, "It is incorrect to suggest that the mandate of the UK's Government and Equalities Office does not extend to Northern Ireland; it does with respect to CEDAW and the Commission on the Status of Women and women's engagement on these issues."

<sup>3</sup> See United Kingdom's Eight Periodic Report 2011-2017 on p. 2, "In preparing this report, the UK government Equalities Office (GEO) with support from the Welsh and Scottish government conducted a targeted engagement exercise with a cross-section of women's organisations. The consultation process was largely based on the following stakeholder roundtables: in Wales on 19 June 2017, in London on 26 June 2017 and in Scotland on 14 July 2017."

### Q2(c) Human rights in Northern Ireland should uphold international human rights standards.



Consortium Polling 2016 – available at <http://www.humanrightsconsortium.org/wp-content/uploads/2017/07/Attitudes-to-Human-Rights-in-Northern-Ireland-Polling-Data-1.pdf>

## 2. Bill of Rights for Northern Ireland

4. Provision for a Bill of Rights for Northern Ireland, which was to build upon the rights contained within the European Convention of Human Rights (ECHR) by including supplementary rights influenced by International Standards and our local circumstances, was provided for in the Belfast/Good Friday Agreement (the peace agreement) and voted for by an overwhelming majority of people in Northern Ireland through referendum. This commitment to establishing a framework of human rights that was to run throughout the Agreement and the government institutions it established was to be an important confidence building measure in a society that had just experienced decades of conflict. It remains an important confidence building measure as we face the uncertainty of Brexit.
5. The Northern Ireland Human Rights Commission (NIHRC), created and tasked by this Agreement with providing advice on the content of a Bill of Rights for Northern Ireland, fulfilled that duty in 2008. The NIHRC advice called for the inclusion of additional economic, social and cultural rights such as: the right to health (including access to gender-sensitive and appropriate healthcare services and information), the right to an adequate standard of living, the right to work (including fair wages and equal remuneration for work of equal value without distinction of any kind), environmental rights, social security rights and children's rights (including play and leisure). It also added to and strengthened many of the civil and political rights contained within the ECHR for example by suggesting a freestanding right to equality and the prohibition of discrimination, the facilitation of the full and equal participation of women in political and public life and freedom from violence, exploitation and harassment (including domestic violence or harassment, sexual violence or harassment and gender-related violence and harassment).<sup>4</sup>
6. A Bill of Rights for NI based on a model advised by the NIHRC would have provided a practical mechanism for the realisation of many of the rights contained within international treaties of which the UK is a signatory. The advice was based on extensive participatory consultation with thousands of people across NI over the course of 8 years, and therefore represents a clear articulation of public opinion in this regard.
7. In December 2009 the UK government produced a consultation document, which rejected the majority of the advice provided by the Northern Ireland Human Rights Commission. In their reasoning for failing to include the extensive advice of the NIHRC the government stated that they did not see these additional rights as falling within the test of being particular to Northern Ireland or of not being the most appropriate method to realise the particular rights, *"it is the Government's view that the introduction of such rights in Northern Ireland would either be unworkable in practice, or could give rise to unjustified inequalities across the UK."*<sup>5</sup>
8. Instead the consultation document proposed the inclusion of only two rights in a Northern Ireland Bill of Rights- *"a right to vote freely in and be elected at genuine periodic elections*

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<sup>4</sup> The NIHRC Advice can be accessed here: <http://www.nihrc.org/uploads/publications/bill-of-rights-for-northern-ireland-advice-to-secretary-state-2008.pdf>

<sup>5</sup> Northern Ireland Office Consultation Paper, 'A Bill of Rights for Northern Ireland: Next Steps', November 2009, pp 3.15



held by secret ballot<sup>6</sup> and, “the right of the people of Northern Ireland to identify themselves and be accepted as Irish or British or both”.<sup>7</sup>

9. The contrast in approach to the rights to be extended under the UK proposals was stark when compared with the NIHRC advice. However, the resulting consultation exercise clearly established an overwhelming preference of the public in Northern Ireland for the approach adopted by the NIHRC. A total of 36,492 responses were received.<sup>8</sup> Of these at least 34,843 called for a strong Bill of Rights: that is 95% of all submissions. This is a clear indication of public support for a broader range of rights.
10. The UK government failed to appropriately recognise the extent of this widespread support following the consultation and failed to take any further significant action to meet their international obligations towards enacting in Westminster legislation a Bill of Rights for NI. Since the last review of the UK by CEDAW, the United Kingdom continued in this failure despite the following Concluding Observations:

*“Ensure that a Bill of Rights for Northern Ireland incorporates all the rights enshrined in the Covenant and expedite the process of its adoption.”* **Human Rights Committee, August 2015**

*“Expedite the enactment of a bill of rights for Northern Ireland, agreed under the Good Friday Agreement.”* **Committee on the Rights of the Child, June 2016**

*“The Committee recalls its previous recommendation (see E/C.12/GBR/CO/5, para. 10) and urges the State party to take all necessary measures to expedite the adoption of a bill of rights for Northern Ireland.”* **Committee on Economic, Social and Cultural Rights, June 2016**

*“It also recommends that the State party expedite the process of adopting the Bill of Rights for Northern Ireland, and ensure that it is in line with the provisions of the Convention and other international human rights standards.”* **Committee on the Elimination of Racial Discrimination, August 2016**

11. Since the 1998 peace agreement there has been a consistent need for a Bill of Rights for NI, given its potential to build confidence within communities that abuses of the past will not be repeated, and that those abuses which did occur will be rectified. However, given the current time of uncertainty created by the potential UK exit from the EU and the potential repeal of the Human Rights Act (both of which will be explored in this submission), a Bill of Rights for Northern Ireland is even more valuable as it could provide assurance and stability that whatever the future of Northern Ireland, the rights of all will be protected, respected and fulfilled. This is particularly true of the rights won for women through the EU, which will also be explored in this submission.

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<sup>6</sup> Ibid 5.21

<sup>7</sup> Ibid 6.6

<sup>8</sup> The Consortium believes this to be the largest response rate to any consultation that has ever been conducted in Northern Ireland.

The Committee may consider asking:

Given that human rights are a reserved matter to the Westminster Parliament and the Northern Ireland Bill of Rights legislation was to be developed through Westminster legislation, why has the state party failed to deliver a Northern Ireland Bill of Rights in legislation 20 years after the peace agreement?

### 3. Human Rights Act

12. The Human Rights Act 1998 (HRA) gave further effect to rights from the European Convention of Human Rights (ECHR) in domestic legislation across the UK and allowed access to UK courts for violations of Convention rights. The development of this legislation was also a key provision of the Belfast/Good Friday Agreement and took on special significance in Northern Ireland where it acted as one of the key safeguards to prevent against inequalities or abuse of human rights in the exercise of power by the new Stormont Government.<sup>9</sup>
13. The Northern Ireland Executive and all public bodies are required to carry out their functions in accordance with the Act and indeed Stormont legislation can be struck down by courts if they are deemed to not be HRA compliant. The HRA was also to be supplemented with additional rights in Northern Ireland to develop a local Bill of Rights to act as another element in the Stormont human rights framework.
14. The HRA therefore fulfils a unique role in the Northern Ireland system of governance and acts as the main legislative protection of human rights across the UK. Although the Act primarily protects civil and political rights, in the absence of wider enforceable economic and social rights protections the articles of the HRA have been utilised in attempts to enhance the protection of social and economic rights.<sup>10</sup>
15. The HRA has also been important in realising the rights of women across the UK and has been used in a wide variety of ways to protect rights. For example, it has been used to hold the police accountable for failing to protect women from crime<sup>11</sup>, to protect pension rights for unmarried couples<sup>12</sup> and to show that restrictions on access to abortion in NI are incompatible with human rights.<sup>13</sup>
16. However, despite this and despite its centrality to the devolved government in NI, the HRA is currently under threat. The Conservative government would like to repeal the HRA and replace it with a British Bill of Rights, although some within the party would also like a withdrawal of the United Kingdom from the European Convention on Human Rights.

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<sup>9</sup> 'The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency'. Section 6.2, Rights, Safeguards and Equality of Opportunity, Belfast Agreement, 1998

<sup>10</sup> See *R. (Adam and Limbuela) v. Secretary of State for the Home Department* <https://www.escri.net.org/caselaw/2012/r-adam-and-limbuela-v-secretary-state-home-department> and *YL v Birmingham City Council* <https://publications.parliament.uk/pa/ld200607/ldjudgmt/jd070620/birm-1.htm>

<sup>11</sup> *Commissioner of Police of the Metropolis (Appellant) v DSD and another (Respondents)* [2018] UKSC 11 available at <https://www.supremecourt.uk/cases/docs/uksc-2015-0166-judgment.pdf>

<sup>12</sup> In the matter of an application by Denise Brewster for Judicial Review (Northern Ireland) [2017] UKSC 8, available at <https://www.supremecourt.uk/cases/docs/uksc-2014-0180-judgment.pdf>

<sup>13</sup> In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland) <https://www.supremecourt.uk/cases/uksc-2017-0131.html>

*“If we want to reform human rights laws in this country, it isn’t the EU we should leave but the ECHR and the jurisdiction of its Court.” **Theresa May (then Home Secretary) April 2016***

*“The Government are committed to scrapping the Human Rights Act and introducing a British Bill of Rights.” **Elizabeth Truss, (then) Lord Chancellor and Secretary of State for Justice, September 2016***

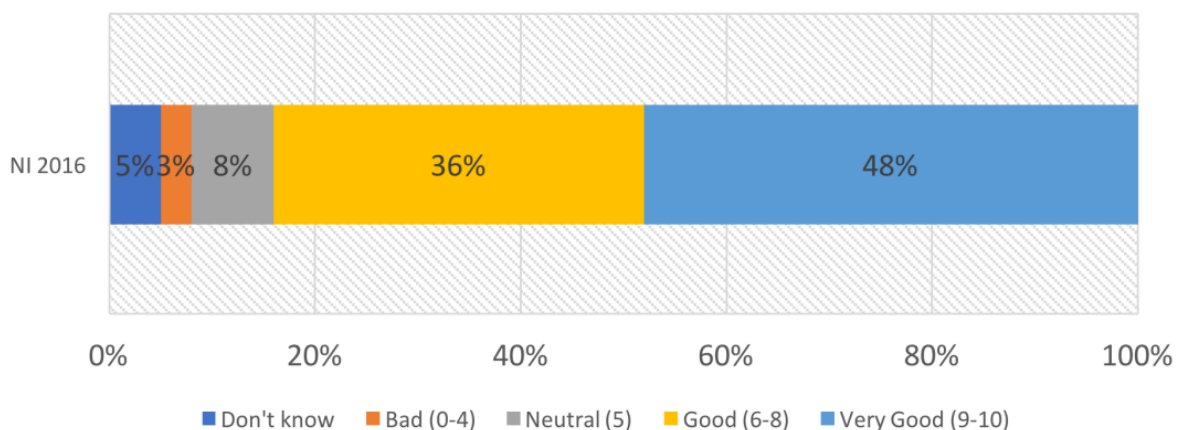
*“We will not repeal or replace the Human Rights Act while the process of Brexit is underway but we will consider our human rights legal framework when the process of leaving the EU concludes.” **Conservative Party Manifesto 2017***

*“There is a discussion to be had around how essential the Human Rights Act is to protecting rights. But with Brexit, now is not the right time to have that discussion.” **David Gauke, Lord Chancellor and Secretary of State for Justice, May 2018***

17. We are concerned that replacing the HRA with a British Bill of Rights will undermine the core protections the HRA provides in the system of checks and balances within the Stormont model of governance.

18. At a time of huge political upheaval in the UK we believe it would be damaging to confidence in our devolved government if current human rights guarantees, such as those enshrined within the HRA, were to be in any way diluted, undermined or removed. This period of upheaval rather should be viewed as a time to build upon rights protections.

#### Q4: Generally speaking, would you say the Human Rights Act is good or bad for Northern Ireland?



Consortium Polling 2016 – available at <http://www.humanrightsconsortium.org/wp-content/uploads/2017/07/Attitudes-to-Human-Rights-in-Northern-Ireland-Polling-Data-1.pdf>

19. If there is to be an alteration of the HRA, then we would hope that it strengthens the rights protections people in the UK currently enjoy, certainly nothing should be done to undermine

the HRA or how the rights are enjoyed and can be accessed. This concern has been reflected by a number of UN human rights committees since the last review of the UK by CEDAW.

*“The State party should ensure that public statements or legislative changes, such as the establishment of a Bill of Rights, do not erode the level of constitutional protection afforded to the prohibition of torture, cruel, inhuman or degrading treatment or punishment currently provided by the Human Rights Act.”* **Committee against Torture, June 2013**

*“Ensure that any legislation passed in lieu of the Human Rights Act 1998 — were such legislation to be passed — is aimed at strengthening the status of international human rights, including the provisions of the Covenant, in the domestic legal order, and provide effective protection of those rights across all jurisdictions.”* **Human Rights Committee, August 2015**

*“The Committee recommends that the State party undertake a broad public consultation on its plan to repeal the Human Rights Act 1998 as well as on the proposal for a new bill of rights. It also recommends that the State party take all necessary measures to ensure that any new legislation in this regard is aimed at enhancing the status of human rights, including economic, social and cultural rights, in the domestic legal order and that it provide effective protection of those rights across all jurisdictions of the State party.”* **Committee on Economic, Social and Cultural Rights, July 2016**

*“The Committee is concerned that the proposal to replace the Human Rights Act of 1998 with a new British Bill of Rights may lead to decreased levels of human rights protection in the State party, which would negatively affect the situation of individuals protected under article 1 of the Convention...The Committee recommends that the State party undertake meaningful and broad public consultation on its proposal to revise its human rights legislation and ensure that any changes to the current human rights framework strengthens the protection of human rights, and in particular the rights of individuals protected under article 1 of the Convention.”* **Committee on the Elimination of Racial Discrimination, August 2016**

*“Provide reassurance that any proposed British Bill of Rights would complement rather than replace the incorporation of the European Convention on Human Rights in Northern Ireland law and acknowledging this is a primary matter for the Northern Ireland Executive and Assembly -that a Bill of Rights for Northern Ireland to reflect the particular circumstances of Northern Ireland should be pursued to provide continuity, clarity and consensus on the legal framework for human rights there.”* **Ireland, UPR, May 2017**

*“Make sure that, in case the proposals for a British Bill of Rights are realized, the current level of human rights protection provided by the Human Rights Act of 1998 is maintained and improved.”* **Ukraine, UPR, May 2017**

*“Carry out extensive consultations with civil society related to the repeal of the 1998 Human Rights Act. In view of the process of leaving the European Union, ensure that any new legislation aims at strengthening human rights in the entire jurisdictions of the country.”* **Uzbekistan, UPR, May 2017**

The Committee may consider making a recommendation similar to the ones above or to consider asking the UK:

How they will ensure that current standards of rights protections enjoyed under the ECHR and the Human Rights Act are maintained in any future legislation which amends or repeals the Act?

## 4. Human Rights Implications of a UK Withdrawal from the European Union

20. Another potential threat to the current standard of enjoyment of rights in the United Kingdom lies with the exit of the UK from the European Union. On 23 June 2016 the people of the UK voted in a referendum to leave the EU. Two years on it is still not clear what effect this will have on the added layer of human rights protections we enjoy due to the UK having been a member of the EU for over forty years. The UK government currently intends to carry over all existing EU law apart from the Charter of Fundamental Rights, and it would end access to the Court of Justice of the European Union. There are several reasons why this approach is problematic, the details of which will be explored below. Firstly, there is no guarantee that EU laws (and the protections they afford) will not be rolled back at a later stage. Secondly the CJEU has been important in ensuring states are progressive in their interpretation of legislation. Thirdly the European Charter has been particularly important in ensuring that women's equality is a priority.

### 4.1 Rights and Equalities at Risk

21. EU law has had a significant impact on the rights of women, especially in the areas of economic activity and employment law. From the outset, the EU recognised the value of equal pay for equal work in the EU treaties as a core value of the European project.<sup>14</sup> This provision was a recognition of the economic origins of the EU, but it evolved over time and is now considered as a fundamental right<sup>15</sup> and the economics are secondary to its social aim of contributing to the improvement of living and working conditions for everyone within the EU.<sup>16</sup> The EU Charter recognises that equality between men and women should be viewed as a priority and that this principle of equality should not prevent the 'maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex'. This reaffirms the need for structural change and recognises that when dealing with systematic gender discrimination it is often necessary to take positive action to redress historic underrepresentation and to ensure that women are properly represented in all areas of public life. As well as this specific assertion of equality between the genders, the rights of women are protected across the full range of rights contained within the Charter and the prohibition of discrimination on grounds of sex and a range of other grounds is recognised in article 21.

22. The fundamental recognition of equal pay for equal work in the treaties has been updated and supplemented by a range of other provisions which ensure that women are not discriminated against in the workplace and beyond. The Gender Recast Directive consolidated a number of important EU law developments in 2006 and covered areas such as access to employment, promotion, vocational training schemes and working conditions to

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<sup>14</sup> Article 119 Treaty establishing the European Economic Community

<sup>15</sup> Case C50-96 Deutsche Telekom v Schröder

<sup>16</sup> Case C-43/75 Defrenne v Sabena

ensure rights of women were central to protections of workers.<sup>17</sup> This law has been supplemented by a number of EU gender equality strategies that seek to encourage all EU member states and the EU institutions to mainstream gender equality in all of their laws, policies and funding models.

23. While the EU has had a significant impact on advancing women's rights through law and policy the process of change is more subtle.<sup>18</sup> A major contribution of the EU has been to 'shift the nature of debates about gender equality' and through its principles of gender mainstreaming and coding gender equality into the actions of the EU, it has 'made us all better at 'talking the talk' of gender equality.'<sup>19</sup> The 'pull factor' of EU membership towards higher standards is considerable in the area of gender equality.
24. The EU has been particularly important in extending the scope of equality protections for women in the workplace. Some of the most significant developments relate to the protection against discrimination on grounds of pregnancy and maternity. In his report for the TUC prior to the Brexit referendum, Michael Ford QC stated: *"The [CJEU] has repeatedly acted to correct decisions of the domestic courts which were antithetical to female workers' rights: a history could be written based on the theme of progressive decisions of the [CJEU] correcting unprogressive tendencies of the domestic courts."*<sup>20</sup> For example, prior to a CJEU decision in 1994, in the UK if a pregnant woman was making a claim for discrimination on grounds of sex, she would have to prove she was being treated less favourably than a pregnant man.<sup>21</sup> The CJEU recognised that the gendered potential for discrimination on grounds of pregnancy was one which fell specifically on women and as such should be treated as a unique form of discrimination.
25. Discrimination on grounds of pregnancy or maternity continues to be serious problem for women's full participation in the work force as demonstrated in a recent report by the Equality Commission for Northern Ireland.<sup>22</sup> This discrimination impacts on women's lives in a variety of ways. As well as impacting on their ability to work and salary, it can also negatively impact women's self-confidence, family life and mental and physical health. The effect of this change in the law was to make it easier for women who face pregnancy discrimination to hold their employer to account and to get financial redress.<sup>23</sup> This mechanism continues to be

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<sup>17</sup> Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (5 July 2006)

<sup>18</sup> Charlotte O'Brien 'The EU speaks the language of gender equality but with a male voice' 8 March 2016 <http://ukandeu.ac.uk/the-eu-speaks-the-language-of-gender-equality-but-with-a-male-voice/>

<sup>19</sup> Ibid

<sup>20</sup> Michael Ford QC: Workers' Rights from Europe: The Impact of Brexit (Report for the TUC) <https://www.tuc.org.uk/research-analysis/reports/workers%E2%80%99-rights-europe-impactbrexit> (20 April 2016)

<sup>21</sup> Case C-32/93 Webb v EMO (14 July 1994)

<sup>22</sup> ECNI, Expecting Equality: A Formal Investigation into the Treatment of Pregnant Workers and mothers in Northern Ireland workplaces 2016

<sup>23</sup> Woman accepts settlement over pregnancy discrimination <http://www.bbc.co.uk/news/uk-northern-ireland-40874631> (10 August 2017)



an important safeguard against an ongoing pattern workplace pregnancy and maternity discrimination in Northern Ireland.

26. In addition, the CJEU has had an important role in protecting migrant women's rights to access social benefits when they are constrained from working due to pregnancy and maternity: 'a woman who gives up work, or seeking work, because of the physical constraints of the late stages of pregnancy and the aftermath of childbirth retains the status of 'worker', within the meaning of that article, provided she returns to work or finds another job within a reasonable period after the birth of her child'.<sup>24</sup> This has a profound impact as unless a pregnant EU migrant can show they are entitled to continued worker status during this period they would not be entitled to access the necessary social benefits and could otherwise face poverty and destitution. Moreover, this protection means that periods where women are not working due to pregnancy or maternity do not constitute a break in the 5 years residence required to attain permanent residency as an EU citizen.<sup>25</sup>
27. Another area of priority for the EU relates to gendered violence and it has sought to coordinate efforts to combat violence against women and girls, this is particularly important on the island of Ireland, which encompasses two separate EU countries and where many people live their lives across borders. In 2013 the EU passed a regulation to coordinate enforcement of 'civil protection measures' across the EU to protect people affected by domestic violence.<sup>26</sup> This regulation ensured that anyone who sought and obtained a civil injunction for physical or psychological abuse against another person could move across the EU in the knowledge that this injunction could be enforced in another EU state without any additional declaration or special procedure. This mechanism includes orders covering the prevention of violence in close relationships, such as physical violence, harassment, sexual aggression, stalking, intimidation or coercion.<sup>27</sup> Moreover, the EU has sought to coordinate the support given to victims of crimes across all the member states and has sought to coordinate policing and security measures on gendered violence.<sup>28</sup> The European Protection Order established a mechanism allowing persons who benefit from a protection order in criminal matters issued in one member state to allow for that protection to move with them as they move between member states.<sup>29</sup> These mechanisms for mutual recognition of civil and criminal measures are particularly important in NI to ensure that women have the protection of the law and an enforceable means of redress when moving across the Irish border. In addition, the EU has worked to raise awareness of and to combat female genital

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<sup>24</sup> Case C507/12 Saint Prix v Secretary of State for Work and Pensions 19 June 2014.

<sup>25</sup> Citizenship Directive 2004/38/EC

<sup>26</sup> Regulation 606/2013 on mutual recognition of protection measures in civil matters

<sup>27</sup> Council Press Release, EU-wide protection for victims: Council adopts regulation on mutual recognition of protection measures in civil matters

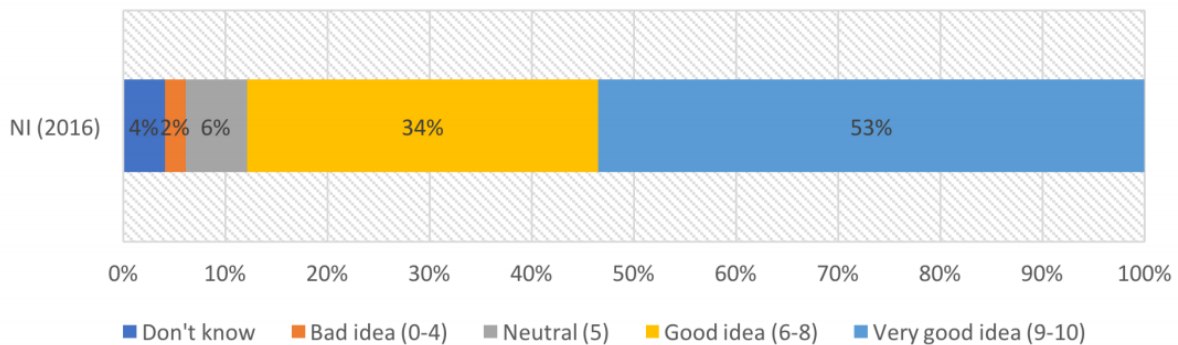
[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/137391.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/137391.pdf)

<sup>28</sup> Victims' Directive 2012/29/EU established minimum standards on the rights, support and protection of victims of crime

<sup>29</sup> Directive 2011/99/EU on the European protection order

mutilation both within and outside of EU by supporting NGOs working to protect women and girls from harm.<sup>30</sup>

### Q3: Generally speaking do you think that having laws to protect human rights in Northern Ireland is a good or a bad idea?



Consortium Polling 2016 – available at <http://www.humanrightsconsortium.org/wp-content/uploads/2017/07/Attitudes-to-Human-Rights-in-Northern-Ireland-Polling-Data-1.pdf>

## 4.2 Loss of EU Funding

28. As well as legal mechanisms and policies to assure women’s rights in Northern Ireland and across all 28 member states, the EU has also had a significant impact on women’s lives through its different funding streams. Of particular importance for rural women has been the Rural Development Programme for Northern Ireland which is funded through the EU however as the Northern Ireland Rural Women’s Network recently noted, *“In light of the end of the EU Rural Development Programme funding in 2020 and the lack of any indigenous Rural Development policy; rural women and their communities will be particularly vulnerable.”*<sup>31</sup> There has been some welcome news in recent days that the EU is proposing making money available to continue funding peace and cross border projects in Northern Ireland after Brexit, from 2021 to 2027. However, this money will be contingent on a Withdrawal Agreement being reached. This is not a certainty and again illustrates how people’s lives are being affected by the uncertainty of the outcome of Brexit.

29. One of the priority areas for the EU has been social inclusion, poverty reduction and rural economic development. In addition, the European Social Fund has been significant in supporting unemployed women to get the skills and experience necessary to get back into

<sup>30</sup> [http://ec.europa.eu/justice/gender-equality/gender-violence/raising-awareness-of-violence-against-women/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/gender-violence/raising-awareness-of-violence-against-women/index_en.htm)

<sup>31</sup> NIRWN, ‘RURAL VOICES: Action Research and Policy Priorities for Rural Women’ March 2018, p.29 <http://www.nirwn.org/wp-content/uploads/2018/03/NIRWN-Rural-Voices-Research-Report-March-2018.pdf>

the workforce.<sup>32</sup> It is perhaps due to the economic uncertainty caused by changes to these funding streams through Brexit that research by the Northern Ireland Rural Women's Network has highlighted the insecurity felt by women living in rural and border areas. When asked, 'What impact do you believe Brexit will have on you, your family and your community?', 40% felt that the impact would be 'mostly negative' and another 53% were 'unsure but concerned'.<sup>33</sup> When the UK withdraws from the EU, it is essential for the UK government to address this uncertainty and find new funding streams to support these projects in Northern Ireland.

### 4.3 Women's Voices and Peace in Northern Ireland

30. One of the areas that women's groups have raised consistently before and since the referendum on whether the UK should leave the EU is the underrepresentation of women's voices in the debate. This was something that was highlighted as an issue in advance of the EU referendum<sup>34</sup> and continues to be a concern with the gender breakdown of the UK negotiating team being a particular issue.<sup>35</sup> NI is particularly poorly represented when it comes to women in politics<sup>36</sup> and while this has improved somewhat recently with increased numbers of women returned as MLAs<sup>37</sup> and with the leadership of three of the five main parties now being led by women, this has not translated into a more inclusive discussion on Brexit.<sup>38</sup> It must also be noted that despite the commitment in the Belfast/Good Friday Agreement to, "the right of women to full and equal political participation"<sup>39</sup> the UK has still not ratified UNSC Resolution 1325 and this is an issue which the Committee has raised before,

*"To ensure the participation of women in the post-conflict process in Northern Ireland, in line with Security Council resolution 1325 (2000)." Committee on the Elimination of All Forms of Discrimination against Women, July 2013*

31. The current political instability in Northern Ireland and the inability of the parties to agree to restore the executive and devolved administration has made it harder for voices from NI to

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<sup>32</sup> See for example the First Steps, Women Towards Education & Employment Project <http://www.firststepswomenscentre.org/index.php/about-us/esf-funding>

<sup>33</sup> Slide 6, from a presentation by Louise Coyle of NIRWN at the 'Charting Brexit Conference', 15 June 2017, available at <http://www.humanrightsconsortium.org/wp-content/uploads/2017/06/LCoyle.pdf>

<sup>34</sup> Polly Neate (Chief Executive of Women's Aid) 'Forget house prices. The EU referendum matters for women's lives' <http://www.telegraph.co.uk/women/life/forget-house-prices-theeu-referendum-matters-for-womens-lives/> (6 June 2016)

<sup>35</sup> Siona Jenkins, 'Is Brexit bad for women?' <https://www.ft.com/content/a1ec120c-6307-11e7-91a7-502f7ee26895>

<sup>36</sup> Assembly and Executive Review Committee, Report on Women in Politics and the Northern Ireland Assembly [http://www.niassembly.gov.uk/globalassets/documents/reports/assem\\_exec\\_review/women-in-politics.pdf](http://www.niassembly.gov.uk/globalassets/documents/reports/assem_exec_review/women-in-politics.pdf) (17 February 2015)

<sup>37</sup> Michael Potter, The representation of women in public life: where does Northern Ireland stand (now)? <http://www.assemblyresearchmatters.org/2017/03/08/representation-womenpublic-life-northern-ireland-stand-now/> (8 March 2018)

<sup>38</sup> Presentation by Louise Coyle of NIRWN at the 'Charting Brexit Conference', 15 June 2017, available at <http://www.humanrightsconsortium.org/wp-content/uploads/2017/06/LCoyle.pdf>

<sup>39</sup> Belfast Agreement, "Rights, safeguards and equality of opportunity" Section 1.

be heard in the Brexit debates and this is made even more acute for women who face multiple obstacles to having their voice heard. It is vital that women are assured a platform to have their voice heard so they can influence both the local decision-making which will impact on women's rights in Northern Ireland and also the UK-wide decisions of the Westminster government.<sup>40</sup> In addition, it is vital that the negotiations between the EU and the UK Government make space to hear women's voices and concerns and to address the very real risks to rights which women face in the Brexit process.

#### 4.4 Economic Impact of Brexit on Women

32. Concerns over the loss of EU funding are also compounded by fears about the potential economic impact of Brexit and who will have to bear the cost of any economic downturn. The Women's Regional Consortium notes, *"In terms of projected structural impact, the 'all-but-unanimous' view of economists is that withdrawal will 'deeply damage' the United Kingdom economy; where economists tend to disagree is on the question of the likely extent of that damage."*<sup>41</sup>

33. This fear is rooted in the experience of austerity which disproportionately affected women. The UK must ensure that if there is an economic downturn as a result of Brexit, that women do not experience it in an uneven way. This is something that women's groups in Northern Ireland are keenly aware of. The Women's Regional Consortium write,

*"It has also been noted that such a recession scenario could further undermine gender equality were it to prompt the kind of gendered recession-responsive austerity measures rolled out in the United Kingdom from 2010, given the disproportionate adverse impact of this austerity model on women, as compared to men. It is estimated that the austerity-driven tax and benefit change in the United Kingdom since 2010 has taken a total of £79 billion from women, as compared to £13 billion from men."*<sup>42</sup>

34. It must also be noted that Brexit is very different in NI than in the rest of the UK. The Northern Ireland Rural Women's Network are clear in their assertion that Brexit is not just something that will happen in the future, but rather that it is already impacting how their members live their lives. This was something that was raised numerous times during workshops the Human Rights Consortium conducted in areas near the border such as L'Derry, Newry and Cookstown.

*"One member said she felt her family was 'being held to ransom economically'. Her particular story exemplifies the complexities of Brexit impacts in the NI region in comparison to the rest of the UK. This person and her husband had been saving for several years to do some construction work on their home. As a result of impending Brexit; they no longer felt they were free to spend this money as they had planned. Their child, currently in sixth form studies, wished to progress to third level education at a university in Dublin. The university has guaranteed its fees for students from the north of Ireland for this year but cannot guarantee that when they child is ready to apply that they will not be viewed as*

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<sup>40</sup> Caroline Walsh, Brexit: Women's Perspectives, Women's Regional Consortium (October 2017)

<sup>41</sup> Ibid, p.5

<sup>42</sup> Ibid, p. 25

*an 'International' student, no longer an EU member and as such subject to much higher fee rates. In addition, the woman's husband has a job with a company whose business traverses the border on a daily basis, as such the company fear they are facing an uncertain future in which they cannot envisage that they will not be subject to increased tariffs to continue to trade. This may result in job losses, pay cuts and potentially business dissolution."<sup>43</sup>*

The Committee may consider asking:

How will women's equality and non-discrimination will be protected post-Brexit?

How does state party plan to provide equivalent protections in the absence of the 'layers' of rights provided by the Charter, particularly without recourse to the CJEU?

Should there be a downturn of the economy, what measures will be put in place to ensure that women are not disproportionately affected?

What equality impact assessments are planned for each stage of the process of the UK leaving the EU?

How will women's voices, particularly those in Northern Ireland, be reflected in the process of the UK leaving the EU?

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<sup>43</sup> NIRWN, 'RURAL VOICES: Action Research and Policy Priorities for Rural Women' March 2018, p.32  
<http://www.nirwn.org/wp-content/uploads/2018/03/NIRWN-Rural-Voices-Research-Report-March-2018.pdf>



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