

Opening Statement to the Joint Committee on the Implementation of the Good Friday Agreement

Committee on the Administration of Justice, CAJ, Thursday, 24th February 2022

We are grateful to the Joint Committee for the invitation to engage today. The Committee on the Administration of Justice, CAJ, is a Belfast-based independent human rights organisation. We are the sister organisation of the Irish Council for Civil Liberties (ICCL) with whom we recently held a conference in Belfast on policing reform marking 20 years of the PSNI. A second follow up conference is now scheduled here in Dublin in March.

We also co-convene the Equality Coalition with UNISON, a network of over 100 equality NGOs and trade unions in the north. The Coalition works collectively on issues including seeking the effective implementation of the rights-based provisions of the GFA and other agreements of the peace process that were to constitute safeguards over the exercise of executive and legislative power.

Last year we updated our mapping exercise documenting the status of implementation of the principal human rights related commitments made as part of GFA and subsequent agreements up to New Decade New Approach (NDNA). A 'policy asks' document has subsequently been produced mapping the reform the Coalition believe is necessary for the functioning of powersharing. Much of this involves the implementation of key outstanding measures from these Agreements. Some duties such as the anti-poverty and Irish language strategies are legal obligations but nevertheless their implementation has been obstructed.

Into 2022 even the core GFA commitment to, and achievement of, the incorporation of the European Convention on Human Rights (ECHR) into NI law is under threat. Also whilst there were many welcome commitments in NDNA far from constituting a new approach a familiar pattern of obstructed implementation of many of its pledges has already recurred.

Despite repeated commitments no Programme for Government (PfG) *at all* has been adopted during the present mandate, nor has the Irish language act and broader NDNA language legislation been introduced, despite drafts of both being already negotiated and included in the text of NDNA. The Irish language act would represent long overdue progress, albeit it would still fall below meeting treaty-based commitments to the Irish language entered into on the back of the GFA. Expert working groups have also progressed a number of equality strategies committed to in NDNA, but they have not been formally adopted in the current mandate.

A key ask of the Coalition has been the removal of the veto introduced at the time of the St Andrews Agreement that precludes Stormont Ministers from taking 'controversial' or 'significant' decisions outside the framework of the PfG, instead requiring the full NI Executive to take the decision, with a provision whereby three ministers can also require both unionist and nationalist majorities. In practice this veto has turned on its head the intention of the GFA— that safeguards over the exercise of power be grounded in objective rights-based criteria. Rather the St Andrews veto has been used to block measures that further equality and rights. It has had a particularly broad impact in the present mandate where there is no PfG, having been invoked on at least half a dozen occasions by DUP ministers. This is a far contrast from the original intention of the GFA whereby safeguards on powersharing were to be centred on the NI Bill of Rights. We welcomed that under

NDNA a process was reinitiated to take forward the Bill of Rights, and an Assembly committee established. It is concerning that in part its work has been impeded, not least by the non-appointment of a Panel of Experts to assist it. Nevertheless, a lot of expert evidence was delivered to the Committee and reflected on in its report, that the Northern Ireland Human Rights Commission can now take forward.

It is worth reflecting on what a Bill of Rights could have prevented had it been in place as intended. It was to be the scrutiny tool for valid Petitions of Concern in the Assembly. It was to guard against past abuses such as gerrymandering of housing, concerns around which have re-emerged. It would have protected against discriminatory-decision making on LGBT or minority language rights.

The Bill of Rights would also have prevented regressive actions of the UK government – the obvious example being the current UK Command Paper on legacy. The plans for a UK legacy bill that would shut down all meaningful investigations into conflict-related deaths would have simply been unlawful if the Bill of Rights recommended by the NI Human Rights Commission had been in place. The Bill of Rights was to expressly contain a provision requiring legislation ensure effective investigation into conflict related violations of the right to life. This would have mitigated against UK attempts to rollback the domestic application of the ECHR. Should the UK proceed with its legacy bill it is imperative from our perspective that the Government intervenes through international mechanisms.

It is also worth noting that the Bill of Rights – given its provisions preventing differential treatment of British and Irish citizens in the north- would have precluded the type of hard Brexit pursued by the UK. Brexit has thrown up new challenges that could also be reflected in the Bill of Rights, including freedom of movement in the Common Travel Area (CTA)– a given at the time of the GFA. We have been engaged in a joint body of work recently on this issue with a range of migrant groups led by the Derry-based North West Migrants Forum.

To this end we are particularly concerned that the land border is about to be hardened for considerable groups of ethnically diverse citizens within our border communities by the UK's present Nationality and Borders bill introducing requirements for prior 'Electronic Travel Authorizations' (ETA) for non-Irish EU citizens, and others who do not require UK visas. This requirement will be backed by in-country checks and criminal sanctions, including potential imprisonment.

This means that such persons who presently have lived cross border lives unhindered will face a hard border obstacle even for short local journeys they have always undertaken (including to nearest shops, school trips, social visits, work meetings). There are also implications for cross border services, some of which like areas of health are provided on a cross border basis.

This mirrors the existing problem of an invisible hard border for persons who are resident one side of the border but who are visa nationals, and who cannot cross it without first going through the complex process of visa acquisition for what are often short local journeys that can be undertaken unhindered by almost everyone else. A visa national lawfully resident in Derry cannot even visit beaches or hills in Donegal. At times families are split as some can go on day trips whilst others remain trapped inside an otherwise invisible border.

Whilst the UK continues to commit to no passport checks on the actual border we have been concerned for some time about selective passport checks conducted by the Gardaí on the land border. Duties further to the Immigration Act 2004 to carry and produce passports when crossing the land border are disapplied to Irish and British citizens and persons exercising EU rights but applied to other non-nationals. In the context of ethnic diversity it is not possible to tell different groups of citizens apart and this differentiated system invariably leads to incidents of racial discrimination. This circumstance has led to a situation whereby persons of colour, including Irish citizens, can feel required to carry passports on cross-border bus journeys (including routes from Donegal that transit through the north), whereby white Irish citizens do not. We have worked up a series of asks with North West Migrants Forum to seek to end these practices, both in terms of discriminatory passport checks and the hard border faced by particular groups of people on this island.

It is notable that there are relevant commitments in the NI Protocol to the Brexit Withdrawal Agreement that conflict with such hard borders. Consequently the Human Rights and Equality Commissions have already called on the UK to disapply its ETA system on the land border. The stated objectives of the Protocol expressly include the avoidance of a hard border, and the provisions of the CTA under Article 3 are the relevant arrangement for this relating to the movement of people. Article 2 of the Protocol commits to 'non diminution' in certain GFA rights as a result of the UK's Brexit and is a provision that if properly interpreted could be transformational particularly for other EU citizens in the border counties.

We are grateful for the opportunity to engage with the Committee and I am joined by my colleague Úna Boyd to answer your questions.