**Briefing to the Biden-Harris Administration on Brexit and the protection of the Good Friday Agreement, human rights and equality laws in Northern Ireland – March 2022**

While we fully understand that your administration is rightly focused on what can be done to prevent the unfolding horrors in Ukraine, we, as representatives of civic society groups from across the island of Ireland, felt that it would be important in the run up to St. Patrick’s to prepare this short update on the current status of the Good Friday Agreement’s human rights and equality protections in light of the continuing controversies surrounding the implementation of the Ireland-Northern Ireland Protocol. This is the second such briefing – we provided an equivalent briefing at this time last year, which we hope was helpful.

The Good Friday Agreement is a basis for ensuring no return to the breaches of human rights and equality that scarred Northern Ireland’s past. Securing guarantees for these rights was, and remains, a cornerstone of the Agreement, and the basis for continued peace on the island of Ireland. Civic society groups have long been extremely concerned by the impact that Brexit is having on the Good Friday Agreement’s rights and equality protections because European Union law has been a critical underpinning for them.

In our briefing last year, we identified several developments that we believed demonstrated welcome progress in protecting the Agreement: the inclusion of the no diminution of rights provision in the Ireland-Northern Ireland Protocol; the conclusion of the EU-UK Trade and Cooperation Agreement, which specifically identified a requirement to adhere to the European Convention on Human Rights and to give effect to its provisions domestically; and the ‘New Decade New Approach’ agreement between the NI political parties and the UK and Irish Governments that restored the NI political institutions and led to the establishment of a Committee of the Northern Ireland Assembly charged with examining the creation of a Bill of Rights to contain rights supplementary to those contained in the European Convention on Human Rights.

Unfortunately, we were overly optimistic and must now report that our concerns about the protection of human rights have grown significantly since our briefing of last year. We are concerned that the protection of human rights in Northern Ireland is being significantly undermined by the United Kingdom Government. We believe that their actions are extremely damaging to the Belfast-Good Friday Agreement which has the protection of human rights at its centre.

In the critical period before the 1998 Agreement, we and many others sought to ensure that robust equality protections and the European Convention on Human Rights would be integrated into Northern Ireland law, and effectively enforced. In the case of the ECHR, this was accomplished through the Northern Ireland Act 1998 and the UK Human Rights Act 1998, which therefore has a constitutional function in Northern Ireland that is unique in the UK. In response to Brexit and out of a concern for the damage which it would do to the 1998 Agreement, to the panoply of rights protections that followed that Agreement and, ultimately to peace on the island of Ireland, we and many others worked to ensure that strong measures were put in place to ensure no diminution in rights protections, which led to guarantees of no diminution of rights in Article 2 of the Ireland-Northern Ireland Protocol. In that context the points outlined in this briefing focus on three main issues while acknowledging that there are many other significant human rights problems such as the UK government’s proposals to prevent proper investigation and accountability in cases related to the legacy of the conflict.

First, the UK government’s proposals published in December 2021 to replace the Human Rights Act amount to a fundamental change in the balance between human rights protections and executive power in Northern Ireland. If implemented they will significantly impact on the ability of people in Northern Ireland to protect their human rights and seek effective redress when their rights are violated. The UK government’s proposals raise potential problems under the ECHR itself, as well as under the Ireland-Northern Ireland Protocol. If implemented they will significantly undermine the Good Friday Agreement. In our view these proposals are unnecessary, unhelpful and dangerous to the peace in Northern Ireland. A letter from the United States Government expressing similar concerns to the United Kingdom could usefully reinforce this message.

Second, the UK government is pursuing a range of other measures which represent significant departures from their commitment to ensure that as a result of Brexit there would be no diminution of the civil and human rights agreed to in the 1998 Good Friday Agreement. There are already several examples of where diminution is happening. Provisions in the UK’s Nationality and Borders bill introducing prior ‘Electronic Travel Authorizations’ for non-Irish EU citizens represent a clear manifestation of a hard border in the island of Ireland and a significant diminution of rights. The UK Elections Bill includes provisions which would reduce the rights of some EU citizens to vote in local government elections in Northern Ireland. The pursuit of these measures suggests either a very limited awareness of the requirements under Article 2 of the Ireland/Northern Ireland Protocol or a limited commitment on the part of the UK to abiding by it. We are also fearful that the UK Government’s current review of ‘retained EU law’ initiated by Lord Frost will lead to further deterioration of rights protections in Northern Ireland. It would be useful if the US Government makes clear now that in any future trade negotiations with the United States, diminutions in rights are a barrier to the successful conclusion of a trade agreement.

Third, the Committee established by the Northern Ireland Assembly to advance the Good Friday Agreement’s provision to establish a Bill of Rights for Northern Ireland has run into difficulties because the Democratic Unionist Party has withdrawn its support for the idea. The Good Friday Agreement makes clear that it is the responsibility of the UK government to legislate for a Bill of Rights The apparent willingness of the UK Government to accept a DUP veto on progress on this issue undermines the UK’s commitment in the Good Friday Agreement to govern with ‘rigorous impartiality’. It would be useful if the US government could encourage the UK government to deliver on the Good Friday Agreement’s commitment to human rights by establishing a Bill of Rights for Northern Ireland.

We acknowledge and deeply appreciate the repeated expressions of support for the Good Friday Agreement by US political leaders from across the political divide, most notably articulated by President Biden. We also pay tribute to the close and continuing interest of prominent US political actors, which has been a significant factor in what progress has been made in heading off the worst effects of Brexit on equality and human rights in Northern Ireland. Without this support we would be in an even worse position. We ask that the United States Government urge the UK to honour its international law obligations in the Ireland-Northern Ireland Protocol and in the Good Friday Agreement itself. It should also be made clear that the US Government expects the UK Government to ensure that no further political rhetoric or actions on its part will encourage destabilizing and unrealistic expectations by some political groups that the Protocol will be removed.

Given these concerns about what will happen in the weeks and months ahead, we would be grateful for a clear indication being made to the UK Government representatives that US political leaders remain concerned that necessary protections for the Good Friday Agreement, particularly its human rights and equality provisions, remain to be fully secured, particularly in respect of these three outstanding issues. We stand ready to provide further assistance and analysis in relation to any of these areas.

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Amnesty International (Ireland)

Amnesty International (United Kingdom)

Centre for Cross Border Studies

Children’s Law Centre

Children’s Rights Alliance

Committee on the Administration of Justice

Community Work Ireland

Free Legal Advice Centres

Human Rights Consortium

Irish Congress of Trade Unions

Irish Council for Civil Liberties

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