

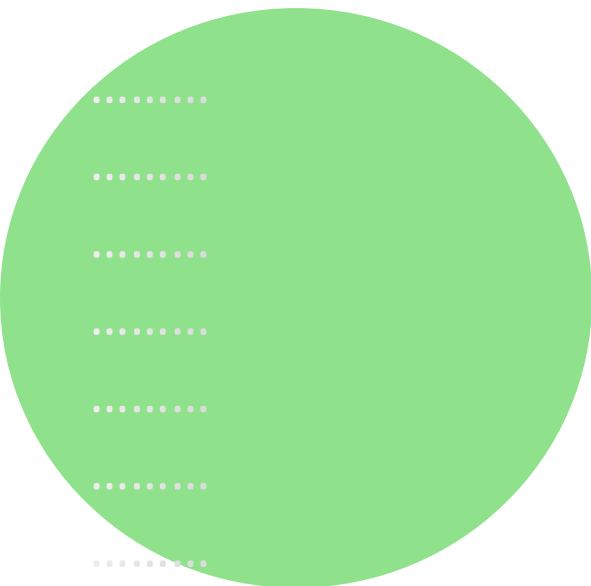
Women's Policy Group NI

COVID-19 FEMINIST RECOVERY PLAN

Key Briefing: Bill of Rights

Rachel Powell

Women's Sector Lobbyist
rachel.powell@wrda.net



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Introduction

Individuals, organisations and political parties have been calling for a Bill of Rights for Northern Ireland for more than two decades. The 1998 Belfast/Good Friday Agreement made provision for a Northern Ireland Bill of Rights; an Agreement which was voted for by an overwhelming majority of people in Northern Ireland through referendum. Since then, although a number of other Agreements have made reference to a Bill of Rights, this has yet to be delivered in practice.

Since the Belfast/Good Friday Agreement, there has been a consistent need for a Bill of Rights for Northern Ireland, given its potential to build confidence within communities. However, given the current time of uncertainty created by the COVID-19 pandemic as well as the UK exit from the EU (Brexit), a Bill of Rights for Northern Ireland is even more valuable as it could provide people with assurances that whatever the future of Northern Ireland, the rights of all will be protected, respected and fulfilled.

As laid out in the Women's Policy Group (WPG) NI COVID-19 Feminist Recovery Plan¹, the pandemic has had a disproportionate impact on women, and evidence suggests that Brexit is also likely to hit women the hardest economically and impact women the most in terms of loss of rights protections². A Bill of Rights for Northern Ireland has the potential to provide important benefits for everyone in society, but particularly women as they are more likely to depend on formal rights protections for their safety, welfare and working lives.

Introducing a Bill of Rights for Northern Ireland is an integral aspect of the peace process and must be regarded as a crucial step in achieving full peace, equality and justice in Northern Ireland. As expressed by the Human Rights Consortium's 'Make Our Future Fair' Campaign³:

"A Bill of Rights is not a complicated proposition. It is a way of identifying the things that are most important to us in our society. Instead of hoping or requesting that our elected representatives, public authorities, or civil servants would protect those priorities, a Bill of Rights would instead place a legal duty on all of those groups to try to defend and implement them."

Although the introduction of a Bill of Rights for Northern Ireland would require Westminster intervention, the NI Executive has other powers to introduce and enhance rights, and these should be exercised to their full extent. However, in recent years, there has been resistance from both the NI Executive and the UK government to introducing a Bill of Rights for Northern Ireland. This has meant that many human rights issues remain unaddressed, and Northern Ireland continues to fall behind other UK regions in regards to human rights standards.

¹ Women's Policy Group NI (2020) '[COVID-19 Feminist Recovery Plan](#)'

² WRDA (2019), 'Brexit and the Impact on Women in NI', <https://wrda.net/2019/10/18/brexit-and-the-impact-on-women-in-northern-ireland/>

³ Human Rights Consortium (2021) '[Make Our Future Fair](#)' Campaign [Website]

Key Developments since 1998

As previously mentioned, the Belfast/Good Friday Agreement (1998) made provision for a Bill of Rights for Northern Ireland. This Bill of Rights was to build upon the rights contained within the European Convention of Human Rights (ECHR) by including supplementary rights influenced by International Standards and local circumstances. This commitment was to be an important confidence building exercise in a society that had just experienced decades of conflict.

Tasked by this Agreement with providing advice on the content of a Bill of Rights for Northern Ireland, the Northern Ireland Human Rights Commission (NIHRC) made recommendations to both the NI and UK governments in 2008. This 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 advised a number of rights that would particularly help to increase women's equality

In accordance with the intentions laid out in the Belfast/ Good Friday Agreement, the NIHRC advice also proposed adding to and strengthening many of the civil and political rights contained within the ECHR, for example by suggesting a freestanding right to equality; the prohibition of discrimination; the facilitation of the full and equal participation of women in political and public life; and the right of everyone to be free from violence, exploitation and harassment (including domestic violence or harassment, sexual violence or harassment and gender-related violence and harassment)⁴.

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. However, 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.

The UK government stated that they did not see these additional rights as falling within the test of being particular to Northern Ireland and were not the most appropriate method to realise these particular rights. Within the consultation document this view was expressed as follows: "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."⁵

⁴ 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>

⁵ Northern Ireland Office Consultation Paper (2009) 'A Bill of Rights for Northern Ireland: Next Steps', pp 3.15.

The Human Rights Act (HRA) (1998)

The UK 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.

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. Recent statements include:

- “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 is 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.
- “We will update the Human Rights Act and administrative law to ensure that there is a proper balance between the rights of individuals, our vital national security and effective government.” Conservative Party Manifesto, 2019.

The Human Rights Act has been important to maintaining peace in Northern Ireland and must be defended. However, it does not represent the full protection of the ECHR. For example, there is no free-standing right to prohibition of discrimination (this is included in Article 1 of Protocol No. 12 of the ECHR, which the UK has not ratified). In order to protect enjoyment of the full range of ECHR rights, they should be fully incorporated into a Bill of Rights for Northern Ireland.

Devolution and Human Rights

The two other devolved nations of the United Kingdom, Scotland and Wales, have both made strides to incorporate international standards into domestic decision making. The United Kingdom is a signatory to seven of the nine UN Human Rights Treaties, meaning it has agreed to be bound by them. However, because of the dualist system of the UK, these rights are not automatically enforceable once the UK becomes a signatory. Scotland and Wales, therefore, have used powers within their own devolved competencies in order to give further effect to the rights in these treaties which represent international obligations to which the UK has agreed to be bound.

The Rights of Children and Young Persons (Wales) Measure 2011 requires that Welsh Ministers, in exercising any of their functions, have due regard to Part 1 of the Convention on the Rights of the Child and also select articles from the first and second optional protocols⁶. Similarly, Part 1 of the Children and Young People (Scotland) Act 2014 imposes duties on Scottish Ministers and other public bodies to comply with UNCRC⁷. At the very minimum, the Northern Ireland Assembly could follow similar steps in order to give further effect to treaties such as CEDAW, ICESCR, CRC, ICERD, ICCPR, CRPD and CAT.⁸ This would be possible within its own devolved competencies.

However, unlike Scotland and Wales, provision was made for a Bill of Rights for Northern Ireland in the Belfast/Good Friday Agreement, and this Bill of Rights was to be enacted through Westminster legislation. There is no such limit to the powers of Westminster to legislate as there is for the devolved institutions; therefore, complete incorporation of these UN treaties would be possible through a Northern Ireland Bill of Rights.

⁶ For more information, see this briefing to the Ad Hoc Committee on a Bill of Rights by Professor Simon Hoffman, <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/ad-hoc-committee-on-a-bill-of-rights/written-briefings/simon-hoffman-swansea-university/>

⁷ For more information, see this briefing to the Ad Hoc Committee on a Bill of Rights by Professor Tobias Lock <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/ad-hoc-committee-on-a-bill-of-rights/written-briefings/tobias-lock-professor-of-law-at-maynooth-university/>

⁸ Convention on the Elimination of All Forms of Discrimination against Women, International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child, International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Rights, Convention on the Rights of Persons with Disabilities and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Why does Northern Ireland need a Bill of Rights?

There are a number of reasons why introducing a Bill of Rights for Northern Ireland is so important. Fundamentally, it would provide rights protections in line with key areas of social infrastructure that people in Northern Ireland rely upon on a daily basis. For example, every day we rely on healthcare, adequate standards of living, and housing protection; however, none of these are currently protected as human rights in Northern Ireland. By making these protected human rights through a Bill of Rights, the Government would become accountable for ensuring these are upheld; facilitating the creation of mechanisms and institutions which can be relied upon to advance these rights.

Since 2008, when the NIHRC provided advice on the introduction of a Bill of Rights for Northern Ireland, there have been a number of additional developments which merit consideration for inclusion in a Bill of Rights. The UK exit from the EU (Brexit) represents a unique threat to rights in the UK. The most obvious loss will be the EU Charter of Rights as of 2021. Continued protection of the rights contained within the EU Charter could be achieved by incorporation into a Northern Ireland Bill of Rights.

A Bill of Rights for Northern Ireland would also help to avoid a divergence of rights on either side of the Irish border after Brexit. For example, areas of protections such as violence against women, or child maintenance payments, rely on EU wide measures to ensure the legal systems on the island of Ireland are coordinated to protect vulnerable people through the criminal justice and family law systems. This is essential to ensure that people cannot avoid the repercussions of violence against women, or refusing to pay child maintenance, by simply crossing the border. All aspects of the Belfast/Good Friday Agreement need to be protected and implemented; including a Bill of Rights for Northern Ireland where specific focus can be given to the rights of women.

What should a Northern Ireland Bill of Rights look like?

It is crucial that any proposed Bill of Rights for Northern Ireland is not merely aspirational, but is armed with tools for enforcement, so that Northern Ireland people can both access their rights and hold government accountable if these rights are not met.

There is serious concern among women's sector groups regarding the over-emphasis on 'values' and 'aspirations' in the recent Bill of Rights Consultation survey. Any aspirational values included in a proposed Bill of Rights should be kept to a minimum, preferably in the preamble or introduction. The Bill of Rights itself should be based on concrete human rights protections which are enforceable and accessible, not merely aspirational. Other important characteristics of any proposed Bill of Rights for Northern Ireland include:

- * Intersectional in focus so as to take into account the varying and compounding ways in which women experience inequality and discrimination, as a result of differing personal characteristics and identities.
- * Has its basis in international law, such as the ECHR and ICCPR.
- * Includes the complete incorporation of International Standards such as: CEDAW, ICESCR, CRC, ICERD, ICCPR, CRPD, ECHR and CAT (including those rights recommended by the NIHRC in their 2008 advice).
- * Includes the Incorporation of rights contained within the EU Charter of Rights.
- * Gives further effect to CEDAW, ICESCR, CRC, ICERD, ICCPR, CRPD and CAT through the use of devolved powers.
- * Gives specific protections to women.

Conclusion

A series of agreements in Northern Ireland in recent years⁹ have made mention of the Bill of Rights without making any actual progress towards delivering a meaningful set of rights. Indeed, the New Decade New Approach (NDNA) Agreement showed little evidence of positive progress in advancing the legal protection of rights formally, beyond provision for new languages legislation. NDNA differs from previous agreements in recent years in that it provides for the (now functioning) Ad Hoc Committee on a Bill of Rights. However, with no agreed process for delivery of a meaningful set of rights outcomes when the Committee concludes its work, there is concern that the Committee could simply become the latest delaying tactic in this long running process.

The COVID-19 pandemic has highlighted the importance of human rights protections, particularly in regards to accessing healthcare and work-related protections. For example, it has highlighted the value of care work, paid and unpaid, and the essential nature of often precarious and almost always low paid retail work, predominantly undertaken by women. Those working in these sectors, and those who rely on the work of these sectors, must be protected by adequate human rights legislation, which could be provided for by a Northern Ireland Bill of Rights. Women are currently being hit hardest by the pandemic, economically, socially and in terms of health. This impact is worsened for women from particular backgrounds: for instance, women from ethnic minority groups, disabled women, and LGBTQI+ women.

Northern Ireland requires a robust and enhanced human rights framework which is embedded in all government institutions and decision-making; based on ideas of fairness, justice, freedom and tolerance. A Bill of Rights would “help the Government identify priority rights that need protected... and give them the authority to frame decision making around the protection of those rights.”¹⁰

The information contained within this report has been taken from the WPG NI COVID-19 Feminist Recovery Plan. The full Plan can be accessed [here](#).

Rachel Powell

Women’s Sector Lobbyist
rachel.powell@wrda.net

⁹ New Decade New Approach, A Fresh Start, Stormont House Agreement

¹⁰ Human Rights Consortium (2021) ‘[Make Our Future Fair](#)’ Campaign [Website]