Joint statement to the Committee on Economic Social and Cultural Rights in advance of the Pre-sessional Working Group in March 2023

We submit this joint statement as civil society organisations working in all nations and jurisdictions of the United Kingdom. This is not a detailed submission, rather, the purpose of this statement is to highlight particular issues that we are deeply concerned about in relation to the realisation of the rights contained within the International Covenant on Economic, Social and Cultural Rights (ICESCR) across the United Kingdom.

The Human Rights Act
The Human Rights Act (HRA) 1998 is the core piece of domestic human rights legislation in the UK. It gives further effect to many of the rights from the European Convention of Human Rights (ECHR) in domestic legislation across the UK and allows access to UK courts for violations of Convention rights. We strongly believe that there is no case for a weakening, undermining, or removing the HRA. In the absence of domestically justiciable protection for economic, social and cultural (ESC) rights in the UK, the HRA has acted to protect these rights, notably in relation to issues such as social security.¹

Over the past decade the UK Government has sought to amend, weaken and now to replace the HRA with legislation (the Bill of Rights Bill) that would undermine rights protections in the UK. Such moves must be strongly resisted.

Devolution
Related to this point the Scottish and Welsh Governments made it clear in March 2022 that attempts by the UK Government to replace the HRA were ‘unnecessary’ and ‘unwelcome’, with the interests of people in Scotland and Wales best protected by retaining the HRA in its current form. Furthermore, the Belfast/Good Friday Agreement committed incorporation of the ECHR into Northern Ireland law, and this was achieved through the same HRA which is now being threatened with repeal.

The devolved nations and jurisdictions of the UK are on their own distinctive paths in relation to the incorporation of rights, notably ESC rights. The UK Government should not be seeking to undermine rights in these nations and jurisdictions, but rather to support measures that would better protect economic, social and cultural rights including the Bill of Rights for Northern Ireland, the UNCRC (Incorporation) (Scotland) Bill, the Good Food Nation (Scotland) Act 2022 and the Human Rights Bill in Scotland, which looks to incorporate CEDAW, CERD, CRPD and ICESCR.

Universality of rights
We are concerned that the universality of rights is being seriously eroded in the United Kingdom. Many groups in the UK face discrimination in attempting to realise their ESC rights – but migrants and those seeking asylum in the UK are facing particular challenges in relation to accessing rights.

A particularly egregious example of this is the Nationality and Borders Act 2022, dubbed the ‘anti-refugee’ bill, which has now passed. The Bill was condemned by the United Nations Refugee Agency. It is a broadside attack on the rights of those who have fled wars, conflict, and persecution and seek refuge in the UK – those who have already experienced huge violation of their rights. In addition, the law fails to introduce new routes for people fleeing war and persecution to claim

¹ See for example ‘In the matter of an application by Siobhan McLaughlin for Judicial Review (Northern Ireland) [2018] UKSC 48’ where the Supreme Court held by a majority of 4 to 1 that the Widowed Parent’s Allowance was incompatible with article 14 of the ECHR read with article 8, insofar as it precluded any entitlement by a surviving unmarried partner of the deceased
asylum in the UK and so leaves people vulnerable to exploitation and reliant upon criminal gangs to reach safety.

No recourse to public funds (NRPF) is an immigration condition imposed on those ‘subject to immigration control’, as defined at section 115 of the Immigration and Asylum Act 1999. A person who is subject to immigration control cannot claim public funds (benefits and housing assistance), unless an exception applies. Without the protection of social security, many families with NRPF who have family members not in work, or not earning enough income to live on through work, end up living in destitution and are at high risk of homelessness, exploitation and abuse.

These legislative measures are taking place in an atmosphere of toxic rhetoric about migrants and those seeking asylum from the media and UK politicians, including the current Home Secretary Suella Braverman who described those crossing the English Channel as an ‘invasion’. This rhetoric has real world consequences, with Braverman’s comments coming only days after the firebombing of a migrant centre in Dover.

Access to economic, social and cultural rights
While in some instances people have been able to use the UK court system through the HRA to enforce their ESC, the rights contained within the Covenant have not been brought into domestic legislation across the UK (though important developments are underway in Scotland). This means that access to remedies for violation of these rights is largely unattainable in the UK. This is further exacerbated because the UK has still not ratified the Optional Protocol to ICESCR, curtailing the ability of individuals and groups in the UK to submit communications directly to CESCR where they believe themselves to be victims of a violation of the rights set out in the Covenant.

An assault on rights standards
In addition to the Nationalities and Borders Act and the legislative attempts to undo the Human Rights Act, we have seen a raft of other legislation in the past year that presents serious risks to the realisation of rights in the United Kingdom.

The Retained EU Law (Revocation and Reform) Bill seeks to expire all retained EU law contained in domestic secondary legislation and retained direct EU legislation on 31 December 2023, unless otherwise preserved. This means that the UK Government could quickly, and without any democratic scrutiny, unpick a huge range of human rights, equality, and environmental standards.

The Police, Crime, Sentencing and Courts (PCSC) Act 2022 represents an attack on the right to protest and threatens to criminalise the traditional way of life of Gypsy, Roma and Traveller communities.

The Elections Act 2022 will make it much harder for millions of people to vote in elections, particularly those from already marginalised groups, by requiring all voters in Great Britain to show ID at polling stations.

Reform of judicial review through the Judicial Review and Courts Act 2022 represents a worrying development – judicial review is key to holding those in power to account.

*WE ASK THE COMMITTEE TO CONSIDER THE ISSUES RAISED IN THIS JOINT STATEMENT AS THEY UNDERTAKE THE SEVENTH PERIODIC REVIEW OF THE UNITED KINGDOM.*

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2 The 2021 Supreme Court ruling in R (SC and Ors) v Secretary of State for Work & Pensions that expressly states that unincorporated international obligations are not enforceable through the domestic courts
Signatories:

1. 4in10 London’s Child Poverty Network
2. Alliance for Choice
3. Article 39
4. Best for Britain
5. Carers Trust
6. Carers Trust Scotland
7. Carers Trust Wales
8. Children’s Rights Alliance for England
9. Committee on the Administration of Justice
10. Disability Rights UK
11. Diverse Cymru
12. End Violence Against Women Coalition
13. Environmental Rights Centre for Scotland (ERCS)
14. Face Equality International
15. Families Outside
16. Freedom from Torture
17. GRIPP
18. Here NI
19. Humanists UK
20. Just Fair
21. Just for Kids Law
22. JustRight Scotland
23. Liberty
24. Mermaids
25. National AIDS Trust
26. North Wales Regional Equality Network
27. Northern Ireland Council for Racial Equality
28. Northern Ireland Women’s Budget Group
29. Nourish Scotland
30. Observatory on Human Rights of Children
31. Participation and the Practice of Rights
32. Quaker Social Action
33. Race Equality First
34. Reclaim the Agenda
35. Rights of Women
36. The Public Interest Litigation Support Project
37. The UPR Project at Birmingham City University
38. Together (Scottish Alliance for Children’s Rights)
39. Training for Women Network (TWN)
40. TransActual UK
41. UNISON
42. UNJUST
43. Wales Civil Society Human Rights Stakeholder Group
44. Welsh Centre for International Affairs
45. Women’s Equality Network (WEN) Wales
46. Women’s Platform
47. York Human Rights City Network
48. CEMVO Scotland
49. Children’s Law Centre
50. Defend Digital Me
51. Engender
52. Health and Social Care Alliance Scotland (the ALLIANCE)
53. Helen Bamber Foundation
54. Human Rights Consortium Scotland
55. Hull Sisters
56. Immigration Law Practitioners’ Association (ILPA)
57. Migrant Centre NI
58. One Parents Families Scotland
59. Public Law Project
60. Refugee Action
61. Scottish Women’s Convention
62. The Hong Kong Scots CIC
63. The Young Women’s Movement
64. WISH
65. Women’s Enterprise Scotland
66. Asylum Matters