

**SUBMISSION TO THE PARLIAMENTARY
JOINT COMMITTEE ON HUMAN RIGHTS
INQUIRY INTO THE EFFECT OF BREXIT ON HUMAN RIGHTS
OCTOBER 2016**

Written evidence from the Equality Rights Group (HRB0012)

Executive Summary:

Equality Rights Group Chairman, Felix Alvarez, OBE, argues that the very premise of Brexit (maximum self-governance) must also be applied to statutory and procedural matters impacting on the ratification and extension of international law instruments to and by Gibraltar. He argues that the Committee may consider the need for aligning these matters with the intent behind the modernisation of powers within the 2006 Gibraltar Constitution ('maximum self-government'). The Committee is urged to recommend changes parallel to the core and express wishes behind Brexit in its application to Gibraltar and its arrangements. Additionally, Mr. Alvarez pinpoints where matters which, currently, are substantively addressed within EU frameworks will gain equal if not greater importance within the frameworks available in international Treaties and Conventions to which Gibraltar must have a more efficient route of access.

Background: Equality Rights Group (ERG):

Established in September 2000 to initially advance the rights of sexual minorities in Gibraltar (and known at the time by the name of 'Gib Gay Rights' or 'GGR'), the organisation established early frameworks to embrace wider issues of human and civil rights, and materialised that broader base through its eventual renaming as 'Equality Rights Group'. Consequently, ERG has grown into and firmly established itself as Gibraltar's Human and Civil Rights NGO. Felix Alvarez is the founder and Chairman of the group. He was awarded an OBE for services to equality, human and civil rights in 2013.

Submission text:

Equality Rights Group (www.equalitygib.org) understands that broad submissions to this Committee on anything other than matters directly arising out of the Brexit scenario would, normally, be a trespass on its terms of reference for the present task. Yet we also understand that the remit of the Committee embraces the wider human rights paradigm even when homing in on a more specific focus. The Committee will therefore comprehend this organisation's obligation to bring the below discrete matters before it for inquiry; especially when the future possible absence of important EU legal provisions may stress a greater importance than ever before to Gibraltar of similar if not identical or parallel protections under international law instruments.

The Gibraltar Constitution 2006, as members of the Committee will know, provides for wide autonomy of powers ('maximum self-government') to a duly and freely elected Legislature, Executive and Judiciary. Those powers extend to issues of internal import and curtail any involvement in matters not strictly of a domestic character, for which HM Government of the United Kingdom retains full sovereign responsibility.

The Prime Minister, Theresa May, has recently announced Government's intention to introduce statutory provisions to allow all currently applicable EU legislation to be incorporated into the statute books post-Brexit. Thereafter, Parliament will decide on whether to amend or repeal such provisions. It's an economical way to proceed, but, without any doubt, a great deal of time and clutter will ensue for a considerable period of time thereafter. Meanwhile, after the funeral, the living must still go on breathing.

As an organisation that works in favour of Human and Civil Rights in Gibraltar, the issue of Gibraltarians' governance must be of central import to us. On the 23rd of June 2016 the people of Gibraltar's vulnerability to decisions made on their behalf and against their wishes by others materialised in no uncertain terms. This is necessarily of primary concern to us. Our other concern must centre on whether Brexit will become a convenient reason, if not excuse, for paralyzing progress by authorities both internal to Gibraltar or, at a distance, from the UK.

To illustrate concretely: the UN Convention on the Rights of the Child was ratified by the UK 25 years ago. To date, Gibraltar has still not had the Convention extended to it. This is a legal instrument over which our Organisation has been concerned to apply pressure on the Gibraltar Government. While it may be true that, historically, the Government of Gibraltar has, itself, been the main historical culprit for the delay, nonetheless, after due public questioning, we are presently advised by the Gibraltar Minister for Justice that all preliminary procedures ensuring that all statutes are in consonance with the requirements of the Convention prior to extension, are indeed in place. So what is the delay now? Will Brexit be a valid reason for further delay?

Should not Gibraltar, we ask in consequence of experience, be able to fast track such extensions? Isn't the current red tape in the matter of international law instruments of this character running behind the provisions and the tenor of the 2006 Gibraltar Constitution, which was specifically designed to maximise internal governance for the people of Gibraltar? In what way do the current provisions in the UK's Constitutional Reform and Governance Act 2010 need adjustment to facilitate the greater autonomy provided to Gibraltar by its 2006 Constitution vis-à-vis the governance of its domestic affairs and international law?

We submit that, if Gibraltar has been either remiss or negligent for the past 25 years in requesting extension of said UN Convention, it is far from being in the interests of the human and civil rights of the People of Gibraltar to be burdened with the cover of a ready excuse that (we paraphrase) 'it is not in Gibraltar's hands.' We ask: why not?

Brexit's gift to us, however, is the ability to look at the same scenario – but with fresh eyes. If Brexit was predicated by a majority of the British people as a means to giving vent to and ensuring a direct handle on matters over which they feel more own-control must be retained, we must put before the Committee the question as to whether the collateral thinking arising from Brexit should not also lead to a strong analysis as to why Gibraltar may not be deemed sufficiently politically mature or autonomous to be able to directly enter into extension of ratified international law instruments without the slow and bureaucratic process of

intermediate red tape; and what, if any, should be the conditions and considerations in respect of any necessary change.

Furthermore, we ought to ask ourselves: what sense is there, within what is the already existing Constitutional framework for Gibraltar, that procedural arrangements between the United Kingdom and Gibraltar should not fully honour Parliament's intent ('maximum self-government') in approving the currently applicable constitutional arrangements for Gibraltar?

This, we submit, is precisely the situation that currently pertains when we look at the ratification or extension of international law instruments in respect of internal application within Gibraltar. While there will be other examples, one further example would be the 'Istanbul Convention' (Council of Europe's Convention On Preventing and Combating Violence Against Women and Domestic Violence). In this case, Britain has not yet ratified the Convention; so Gibraltar is unable to proceed. In a situation whereby Gibraltar's legislature is not required to copy/paste each and every Westminster statute; why should adoption by Gibraltar of measures such as the Istanbul Convention be necessarily dependent on decisions at Westminster?

The Committee is respectfully requested to consider these questions and determine whether or not adjustments need to be made in favour of procedures, policies and practices which, in effect, may be more amenable to improvement.