

# **Observations and Recommendations on the Immigration, Residence and Protection Bill 2008**

April 2008

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## Introduction

Immigrants make an important contribution to the Irish economy and to Irish society. Migration and work are intimately linked, work is the reason most often cited by migrants for choosing to come to Ireland. The Irish Congress of Trade Unions is the national representative body for all workers on the island of Ireland and as such we have a strong interest in ensuring that there is fair and transparent legislation governing the rights, entitlements and obligations of migrant workers and their families. Congress believes that its time for Government, not only to welcome the economic benefits that come from migration, but also to put in place progressive policies and laws that acknowledge and honour the rights of migrant workers and their families.

Our analysis is that the Immigration, Residence and Protection Bill 2008 will have a serious and practical impact on working migrants and their families. Both migrants and established workers have an interest in the fair treatment of migrants. It matters to all workers that their immigrant colleagues are guaranteed equal treatment at work and that they are provided with an entitlement, regardless of their immigration status to enforce their contract and statutory rights. Anything less risks creating second and third class members of the workforce and of society.

Congress concerns about the lack of clear legal rules setting out rights, entitlements and obligations of migrants in Ireland.

The Irish Congress of Trade Unions welcomes the publication of the Immigration, Residence and Protection Bill 2008<sup>1</sup>. Last year, 2007 Congress set out our the need for a rights based immigration system, set out in legislation, which would clearly specify the rights and entitlements of migrants during each of the phase of the immigration cycle. Workers

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<sup>1</sup> The Immigration, Residence and Protection Bill 2008 (as initiated) is available on the Oireachtas website [www.oireachtas.ie](http://www.oireachtas.ie)

need clear and transparent laws with predictable outcomes and which give certainty to questions such as who gets to come to Ireland? How long can I stay? Can I bring my family with me? What are the conditions for remaining in Ireland? What are my obligations? And what rights do I have to complain or appeal against decisions made against me?

Migrants and Irish citizens need to have a clear idea about the criteria that are being used to determine applications and everyone should be able to assess with a reasonable degree of certainty whether and in what circumstances different migration requests will be granted or refused. Trust and confidence in Ireland's immigration system will only be established when the policies, procedures and laws are seen as being just and fair to all parties.

Unfortunately our analysis is that the Immigration, Residence and Protection Bill 2008 falls substantially short of this expectation, it does not spell out migrants rights, entitlements and obligations but rather it will leave the answer to many important questions blank, most of the 'rules' will be made at some later, unspecified, date by the Minister and by way of secondary legislation. Where there are rules, the Bill proposes to retain a large element of discretion for the Minister, or those working on his behalf, so that they will be able to apply or as the case may be, refuse to apply, various provisions of the 2008 Bill. This is disappointing, it means that many of the existing problems with the current system, such as the lack of clarity about rights and inconsistent decision making, may well continue even with the passing of this legislation.

A particular area of concern is the failure to provide for an independent appeals mechanism dealing with all decisions made under the legislation, which is a surprising omission given the commitment in the Programme for Government for a 'visibly independent appeals process'. If the Bill is to meet the important objective of providing clarity about the rights, entitlements and obligations of migrants in Ireland then it needs to set out

the rules that will apply in the different circumstances and all fair systems have an appeal process.

Congress is particularly disappointed that the proposed legislation does not incorporate the provisions of the **International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families**. The Convention provides a comprehensive legal framework for protecting migrants both documented and undocumented. It establishes minimum standards of protection for migrant workers and their families that are universally acknowledged. Applying the Conventions provisions would allow Ireland to bring our legislation in closer harmony with recognised international standards.

#### Inadequate protection from persecution

Many of the current provisions in Section 7 of the Bill which relate to protection for people fleeing persecution need to be reconsidered. A number of organisations charged by Government with responsibility to protect various Rights have expressed concern about a number of the Bill's provisions. The Irish Human Rights Commission has made 59 recommendations for changes to the Bill. These recommendations will need to be built into the amended Bill if Ireland is to ensure that the human rights of immigrants and 'protected applicants' are fully protected. Likewise the UNHCR have highlighted significant shortfalls in the Bill, which if made into law will mean that Ireland will fail to secure observance of the 1951 Geneva Convention on Refugees. Such a situation is clearly not acceptable. Congress believes that the Bill should not be progressed until such time as the UNHCR is satisfied that the proposed legislation is consistent with the 1951 Geneva Convention on Refugees and that the

recommendations of the Irish Human Rights Commission<sup>2</sup> are incorporated.

Protection from persecution is an area of specific relevance for trade unions. Around the world, each year trade unionists can pay a high price for representing their fellow workers and their communities. Whether in Iran, Colombia, the Philippines or elsewhere trade unionists are being murdered for defending workers' rights. The ITUC '*Survey of Violations of Trade Unions Rights*'<sup>3</sup> demonstrates a shocking increase in anti-trade union violence, with the number of murders rising from 115 in 2005 to 144 in 2006. The ITUC survey reveals that anti-trade union repression is taking place in every continent across the globe, Congress is therefore requesting that the Minister ensure that Section 61 of Part 7 of the Bill provides adequate provisions to ensure access to Ireland's protection system for trade unionists who are fleeing persecution and serious harm and that they are considered to be 'persons eligible for subsidiary protection'.

This Bill needs to ensure that the rights of all those who are seeking protection are properly respected and upheld. The Bill must provide adequate safeguards that respects the fundamental rights in international refugee and human rights law. Importantly the Bill must comply with non-refoulement principles which are a cornerstone of international protection obligations. For example, the suggestion in Section 63 of the Bill that it is possible for a person to be safely sent back to a country from which they are fleeing persecution, once it's to a 'safe' part of that country is neither credible nor in compliance with our international obligations.

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<sup>2</sup> Irish Human Rights Commission, Observations on the Immigration, Residence and Protection Bill, March 2008.

<sup>3</sup>Published by the International trade Union Confederation in September 2007 and available on [www.ituc-csi.org](http://www.ituc-csi.org)

Congress also supports the calls for amendments identified by other State Bodies charged with Rights observance including the Equality Authority<sup>4</sup> and National Consultative Committee on Racism and Interculturalism<sup>5</sup>.

### Long Term Residency Rights but still no 'Green Card'

Congress welcomes the fact that this Bill aims to be consistent with Ireland's labour market policy and the permission to work schemes. We particularly welcome the Minister's Statement on Launching the Bill<sup>6</sup> that it should be seen to operate in tandem with the Employment Permits Act 2006<sup>7</sup>. In this regard the inclusion of a statutory provision granting Long Term Residency Rights are very much welcome. Section 36 of the Bill provides that in general, after five years, and after meeting certain conditions, the Minister will be able to grant a 'long term residence permit'.

Although welcome, this provision is not what Congress was hoping for, it is not a green card. Permanent residence, on entry to the country, is the essential feature of a green card. There are no provisions whatsoever in this Bill to support the introduction of such a scheme which is surprising as the Minister for Enterprise Trade and Employment has since 2005<sup>8</sup> been announcing the introduction of a Green Card for workers coming to Ireland. Workers need accurate information, not spin, when it comes to their rights and entitlements and they should not be misled about the availability of a 'green card' in Ireland. Notwithstanding this, Congress is calling for the Bill to be amended to reduce the amount of time from five years to two years for applications for long term residence permits, at least

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<sup>4</sup> Equality Authority, NCCRI, Submission to the Immigration, Residence and Protection Bill 2008, March 2008.

<sup>5</sup> NCCRI, Submission to the Joint Committee on Justice, Equality, defense of Women's Rights, Immigration, Residence and Protection Bill 2008.

<sup>6</sup> Press Release, Minister Lenihan launches new Immigration Bill, 29<sup>th</sup> January 2008.

<sup>7</sup> We welcome that the Minister for Enterprise Trade and Employments will shortly require students to have an employment permit however more action is needed in regard to the quality of 'language schools'.

<sup>8</sup> See Press Releases and Speeches made by Mr Micheal Martin, TD, Minister for Enterprise Trade and Employment available at <http://www.entemp.ie/press/>.

for those (high skill) workers on employment permits provided under Section 4 (1) (b) of the Employment Permits Act 2006.

### Some problems with the eligibility conditions for a Long Term Residence Permit

For the majority of workers they will not be eligible for the Long Term Residency permit, workers until they have finished five years of employment permits, permits are typically issued for a period of one or two years. It is likely that workers conscious of the need to remain in work on the permit, will cooperate with any and all request of the employer, no matter how unreasonable. Workers will be reluctant to speak out as their access to the Long Term Residence Permit will rely on the ongoing renewal of their employment permit. It is not desirable to allow a situation to develop where a workers access to residency rights is dependant in any way on the say so of their employer.

In this regard the eligibility requirement set out in Section 36 (iv) is of particular concern. This section seems to imply that if a worker avails of social welfare during the five year period then they will not be eligible for the long term residence permit. The section sets out reasons to refuse a long term residence permit, among these reasons to refuse is the following *“has, during his or her presence in the State, been supporting himself or herself and any dependants without recourse to such publicly funded services as are prescribed”*

It would be grossly unfair, and unacceptable to Congress, if workers were placed in a position where they were in fear of loosing out on their application for long term residence if during the five year period they used the labour inspection services of the National Employment Rights Authority or the services of the labour court or equality tribunal.



It would also be grossly unfair if migrants were putting their right to long term residence in jeopardy by applying for a social insurance payment, for example if during the five years they applied for sickness benefit because they were out of work due to an accident or sickness. Migrant workers pay into the social security scheme on the same basis as everyone else and they should be able to draw their benefits in the same way as all other contributors.

This Bill needs to be amended in line with our responsibilities under International Conventions dealing with the Social Security rights of migrant workers, for example **ILO Convention No 118 Equality of Treatment (Social Security) Convention**, provides that *“Each Member for which this Convention is in force shall grant within its territory to the nationals of any other Member for which the Convention is in force equality of treatment under its legislation with its own nationals, both as regards coverage and as regards the right to benefits, in respect of every branch of social security for which it has accepted the obligations of the Convention.”* Ireland should at least, respect the obligations we have signed up to in this and a number of other Conventions. There are a number of other social security and other obligations towards workers and their families that must also be taken into account when making the rules that will apply <sup>9</sup> other wise Ireland will be in breach of its International obligations. Congress is therefore seeking consultation on the development of the secondary legislation which will set out in detail these entitlements and we ask that the Minister be required to consult with the social partners when drafting up the secondary instruments provided for under this section of the Bill.

Access to other services are equally important. Workers and their families must be able to attend at schools, hospitals and use all other publicly funded

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<sup>9</sup> Including Convention No 118 Equality of Treatment (Social Security) Convention, 1962, Convention No 157 Maintenance of Social Security Rights Convention, 1982 and Recommendation No 167 Maintenance of Social Security Rights Recommendation, 1983

services without fear of destroying an entitlement to long term residence as a consequence.

Congress is requesting that the Minister consult with Congress to ensure that the services he prescribes do not lead to a negative impact on workers and workplaces nor should workers families be restricted from access to public services, these should be available, without fear of losing an entitlement to long term residence, and on the same basis as they are available to local workers. Access to local schools is particularly important as it provides a real way for migrant families to integrate into local communities. Access to English language courses, is particularly important, it assist the worker and their family to integrate into the community and as the ability to speak English (or Irish) is a condition for long term residence permits access to courses is essential. Employers should have some responsibilities in this regard.

In relation to the integration requirements set out in Section 36 (4) (c) (iii) that the migrant *“has satisfied the Minister, in such manner as be prescribed, that he or she has made reasonable efforts to integrate into Irish Society”*. Congress is calling on the Minister to allow migrant workers to cite their membership of a trade union as part when establishing what will constitute evidence of making ‘reasonable efforts to integrate’.

#### Amendments to ensure proper protection for all migrant workers

The Irish Congress of Trade Unions has serious concerns about the impact of **Section 6 Non-entitlement to services of foreign nationals unlawfully present**. Our concern is that the impact of this Section will be to deny undocumented or inadequately documented migrant workers from being able to enforce their rights by blocking them from having access to NERA, the Rights Commissioners, the Employment Appeals Tribunal, the Labour Court, the Equality Tribunal and the Equality Authority. Another impact is that it will change the role of NERA, when it

comes to undocumented workers, from that of defending their employment rights to solely that of immigration control.

It is inarguable that undocumented working Undocumented working cannot be supported and Congress recognises that the State has the right to restrict services to those unlawfully present but the proposed limitations go far too far. The Bill is in danger of promoting inequality and injustice in the workplace. Workers irrespective of their status must be protected by all employment and workplace law and should have access to the means to vindicate these rights and employers should not be able to avoid their responsibilities towards the worker simply because they are undocumented. It would be outrageous if this legislation was to create a situation where an employer could put forward as a defence, for not paying the minimum wage, for not properly respecting health and safety responsibilities or for sexually harassing their workforce, the fact that the workers were undocumented.

This is not an unrealistic fear, experience in Ireland and abroad, shows that unscrupulous employers exploit the situation of undocumented workers and often intimidate them into accepting less than decent treatment and unsafe working conditions. Such employers even use the threat of reporting the worker to authorities as a way to keep control over the workforce. In recognition of this abuse, the focus across Europe has been to reduce the demand for undocumented labour by focusing sanctions on employers rather than removing rights from workers. The EU Commission support our approach, in their Directive “*Providing for Sanctions Against Employers of Illegally Staying Third-country Nationals*” (September 2007)<sup>10</sup> the Commission advocate for sanctions on employers and cautions against member States reducing or removing rights from workers as a way of combating undocumented working. Ensuring the rights of migrant workers irrespective of their immigration

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<sup>10</sup> Available on line at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007PC0249:EN:NOT>

status should be at the forefront of any policy aimed at reducing irregular migration or undocumented working.

Congress is therefore seeking an amendment to Section 6 of the Bill so that undocumented workers who may as a consequence be deemed unlawfully present, will be guaranteed, in law, access to, and protection under, all employment and workplace rights law, including their trade union rights. Undocumented workers must be able, to seek redress for breaches of their contract and statutory rights. The legislation should be amended to exclude from Section 6 restrictions on access to the Rights Commissioners, the Employment Appeals Tribunal, the Labour Court, the Equality Tribunal, NERA and the Equality Authority and should specifically provide that all workers regardless of their immigration status are entitled to enforce their contract and statutory rights and that no employer can use the fact that the worker is undocumented to evade their responsibilities.

#### Measures to allow undocumented workers to regularise their situation

Congress also recommends that this Bill would provide for a regularisation process for undocumented workers. The aim of such a scheme should be to provide a bridge for workers out of their irregular situation back into a regular situation.

The requirements to be met by the workers to avail of a regularisation scheme should take into account the realities of the situation of undocumented workers in particular, the vulnerable nature of these workers. The legislation needs to take into account the different ways in which workers become undocumented. Similar to the situation of the many thousands of undocumented Irish workers currently working in the United States, undocumented workers in Ireland mostly entered the country lawfully, sometimes as tourists visiting family but most often the migrant worker entered the country as a fully documented worker or

working student. These workers are paying their taxes and making social insurance contributions. However their permission to work, their visa or permit has expired, lapsed or has not been appropriately renewed and as a consequence they are likely to be unlawfully present. There are many reasons why a worker can become undocumented and unlawfully present such as:

- The worker may have become undocumented through the inaction of their employer who, for example, simply did not renew their work permit. The injustice of this particular situation is even more acute as until recently, the employee was not permitted to apply for their own work permit they were refused any information on their situation by the Department of Enterprise Trade and Employment and they were forced to rely on assurances from their employer that all their paper work and permission to work was in order;
- Other workers may have left their original employment, perhaps to escape from an abusive employer and did not apply for or complete the necessary paper work;
- Others may have entered the workforce as students and have continued to work even though their studies have been completed.
- While others arrived as tourists perhaps to visit family and have stayed on and taken up employment;
- Some are spouses of these undocumented workers who's own situation has been put in jeopardy because their status relies on the their spouses permit/visa remaining valid;
- Some are non EEA Spouses married to EU citizens and because of unclear rules some of these workers are now undocumented;
- Some migrant workers are in circumstances of forced labour or have been trafficked and specific measures should be included to meet the needs of this group;
- In some circumstances workers may actually be undocumented and not be aware of this due to a misunderstanding about the permission to work rules either on behalf of the employee or their employer.
- A small minority of workers have entered the country unlawfully and are working.

It is unfair not to provide a way for workers to regularise their situation. This is particularly necessary if we are to avoid the development of occupational sectors dominated by undocumented migrants, creating in the process an exploited working underclass.

Earned adjustment, regularisation, normalisation, bridging visas, amnesties — many EU States have introduced schemes to provide ways of giving legal status to undocumented immigrants. They differ in their approach, their outcome and in relation to the threshold of requirements that the undocumented worker must meet to be able to avail of the scheme. They also differ in relation to their effectiveness and to how much respect and support they enjoy.

Congress is calling for a new section in the Bill which will provide a regularisation process so that workers can formalise their situation. This requires, in the first instance, a six month 'bridging visa' that will enable people to come forward without fear of deportation and which then provides a bridge to return to whatever migration status/work permission they held immediately before they became undocumented. Or, where the justice of the situation demands, to some other appropriate work status.

Concerns about abuse can be dealt with by examining how the worker became undocumented and this combined with the employer sanctions recommended above, provide adequate protections against abuse. In case of any future confusion, it worth saying here that employers should not be given any say in the decision over who gets/does not get onto the bridging schemes.

#### No provisions for family reunification for migrant workers

Early in 2007, Congress contacted the Minister to request that the immigration legislation should ratify the **International Convention on the Protection of the**

**Rights of all Migrant Workers and Members of their Families.** The Convention provides a comprehensive legal framework for protecting migrants both document and undocumented. It establishes minimum standards of protection for migrant workers and their families that are universally acknowledged. Applying the Conventions provisions will allow Ireland to bring our legislation in closer harmony with recognised international standards. We outlined that the ratification of the Convention is important for a number of reasons:

1. In the Convention migrant workers are viewed as more than just economic entities. They are seen as social entities with families and have rights accordingly;
2. The Convention provides for an international definition of a migrant worker and for standards of treatment through the elaboration of the particular human rights of migrant workers and members of their families;
3. The Convention sets out that States must provide sanctions against persons or groups who use violence against migrant workers employ them in irregular circumstances, threaten or intimidate them;
4. Fundamental Human Rights are extended to Migrant Workers and additional rights recognising their unique situation importantly equality of treatment with nationals of states in employment and in other legal, economic political, social and cultural areas.

Ratifying the Convention would be a significant leap forward for Ireland in the prevention and elimination of the exploitation of migrant workers and their families. Congress is further recommending that the legislation will implement the ILO (International Labour Organisation) Conventions and Recommendations concerning migrant workers<sup>11</sup> and allow for their ratification.

Unfortunately the Bill contains no provisions for family reunification in respect of migrant workers (rights are provided only for refugees and other ‘protected persons’). Family reunification is a major issue of concern to migrant workers and the lack of information and clarity on rights is repeatedly cited as a cause of considerable anxiety to migrant workers. The absence of legal rules governing the question of family reunification combined with the

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<sup>11</sup> These include ILO Convention 97 Migration for Employment Convention (Revised), 1949 and R.86 Migration for Employment Recommendation (Revised), 1949, Convention 143 Migrant Workers (Supplementary Provisions) Convention, 1975 and Recommendation .151 Migrant Workers Recommendation, 1975.

long (5 years) qualifying period for permanent residence is often reported as a reason why high skilled migrants choose not to relocate to Ireland. If provisions on family reunification for migrant workers are not included, Ireland will be the only EU Member State that does not have primary legislation covering this important and significant form of migration.

Congress is calling on the Minister to provide a clear set of rules for family reunification for migrant workers. It is important that the definition of family used would include same sex couples and that the legislation would set out the rights of family members generally including their rights to work. It is also important that the legislation would set out the rights of family members in circumstances of marriage breakdown or death. It is essential that spouses are not placed in a situation where they cannot leave a marriage with fear of losing residency rights or that family members face deportation on the death of the working spouse.

### Protecting victims of forced labour and trafficking.

Congress welcomes the inclusion, in Section 124 of the Bill of specific provisions for victims of trafficking. However to deal comprehensively with this complex area, Congress recommends that the provisions designed to protect victims of trafficking would also extend to protect victims of forced labour. Forced labour takes different forms which include but are not restricted to trafficking for example debt bondage, and other forms of modern slavery. Modern day slavers typically recruit poor people by promising them good jobs in Ireland. A recruiter will then offer the victim a generous loan, at an exorbitant interest rate – to help with travel arrangements, papers, employment permits, and locating a job and place to live. On arrival the promised job never materialises and thus a large debt up to several thousand Euros can never be repaid. The victim is then stripped of all travel documents, and forced into a job. Her (and sometimes his) family are threatened with disfigurement or death should



they try to alert the authorities or escape. The **ILO Forced Labour Convention 1930** (which Ireland has ratified) provides a definition which is accepted internationally for Forced Labour and we are requesting that this definition be included in the Bill and used for interpretation of purposes for protecting victims of trafficking and forced labour *“the term **forced or compulsory labour** shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”*.

The assistance that the Minister intends to make will be made available to people who have been victims of Trafficking (and Forced Labour) has several shortcomings and will need to be amended to reflect internationally agreed minimum standards. The Bill unwisely restricts the protections to victims who are trafficked to Ireland from outside the EU thus leaving those who are victims of Forced Labour or Trafficking from within the EU in a less protected position.

Congress welcomes the inclusion of a 6 month temporary permission to remain however we do not believe this should not be dependant on the victims co-operation in the criminal prosecution of the alleged traffickers. The consequences of this decision may affect the victim and their family and leave the victim with an impossible ‘choice’. Rather the legislation should allow for permission to remain for humanitarian reasons in accordance with Article 14 of the Council of Europe Convention on Trafficking.

#### Trafficking, The Right to Marry and ‘Mail Order Brides’

The right of men and women to marry and found a family is a fundamental right protected in the Irish Constitution and all Human Rights Instruments. It is clear that these rights are not properly protected and respected in the proposed legislation. The requirements in section 94 of the Bill on the one hand for permission to marry to be sought from the

Minister, and that a marriage between two foreign nationals will not be considered legal or valid without the permission of the Minister are disproportionate to concerns about the use of marriage as mechanism for migration. There is no evidence of the widespread use of marriage a way for people to gain immigration or residence rights in Ireland. Congress recommends that the legislation should adopt the approach that all marriages be recognised as genuine but that only where the Minister has concerns then the legislation should allow the Minister to require the couple to provide evidence of a genuine and continuing relationship only when there is no evidence of a bona fide relationship and following on an independent appeal process should the 'marriage' fail to be considered legal.

One area where Congress does have some concerns is in relation to the 'Mail Order Bride' industry.

Across the world women find themselves victims of domestic violence after participating in the largely unregulated 'International Marriage Broker' matchmaking industry. Most mail order brides have come voluntarily although some may have been sold by their families, seeking to improve their situation or escaping poverty and hardship. Once married to a "consumer husband" they are vulnerable and isolated. This creates ample opportunity for abusive husbands. Mail-order brides" find it difficult to extract themselves from their situation. They are in a foreign country, far from home, many of the do not even speak the language of the country they live in, let alone know its laws and customs. The abusive husband will have a hold over them able to threaten them or their relatives with further abuse and reprisals should they dare to complain or leave. Many of them do not know where to turn for help and do not dare go to the Gardai for fear of deportation. The legislation leaves the woman, the Gardai and social services ill equipped to deal with this particular situation.

The Council of Europe Recommendation 1663 (2004)<sup>1</sup> on Domestic slavery<sup>12</sup>: servitude, au pairs and “mail-order brides” recommends a series of measures aimed at addressing concerns about “mail-order brides”: importantly they recommend that Member States include “mail-order brides” in the scope of their action against trafficking in human beings, in particular when the “bride” in question has become a victim of violence or other abuse, such as domestic slavery. They go on to recommend the regulation of agencies active in this field through the introduction of an accreditation system, which would commit these agencies to certain minimum standards, such as charging reasonable fees, ensuring that the persons responsible for an Internet agency site are clearly identifiable and that users of the site are obliged to identify themselves, following up marriages and providing an emergency contact number. They recommend that agencies should also be committed to carrying out background checks on the prospective bridegroom to ensure he does not have a criminal record (for example for domestic violence or procurement) when couples consider marriage. Finally they recommend that Member States ensure regular monitoring by appropriate authorities of the agencies accredited under the “accreditation” system referred to in sub-paragraph b above.

The Irish Congress of Trade unions recommends that the Bill be amended to provide measures to curtail the negative features of ‘consumer husbands/mail order brides, by ensuring that these women are aware of their rights when entering the Country, that they are protected under the Bills trafficked persons provisions and importantly that their entitlement to residence does not depend on their remaining with their husband. The Bill should also be used to bring Ireland in line with the Council of Europe Recommendations above.

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<sup>12</sup> Congress restates our previous request to the Minister that visas and/or employment permits for domestic working should only be given where the employer proves that they are giving no less favorable conditions than those set out in the Statutory Code of Practice on the Protection of Persons Employed in other People’s Homes<sup>12</sup>.

## Some problems with the proposals for Identity Documents and Biometric Data

Irish citizens are not required to carry identification cards and are not subject to being stopped and required to produce identification. However the Bill intends that such a requirement will apply to all immigrants. Section 109 of the Bill provides that a foreign national shall produce 'on demand' a valid travel document or a permit. It is difficult to see how Irish citizens can be distinguished from foreign nationals other than on a discriminatory basis. Discriminatory practices are an inherent part of the function of an ID card. Without 'profiling' Gardai would be required to conduct random checks, of all the population in all situations. But even with 'profiling' Irish citizens, who look like they might be immigrants, will be forced to carry identification to prove that they are Irish Citizens and do not have to carry identification as immigrants.

The experience in countries that have national ID cards is not good. Even where everyone is required to carry ID cards still certain groups of people, from ethnic minorities and disadvantaged communities are the people who are constantly asked to produce their cards. The card then becomes a mechanism for prejudice, discrimination or harassment. The use of discriminatory checking procedures which target minorities reinforces negative public and fellow workers opinions about people from these communities (no smoke without fire) as all witness them being stopped on the streets and asked for their ID on a more frequent basis than other groups. In France, the police have been accused of overzealous use of the ID card against black people, and particularly against Algerians. Invariably the level of information contained on the ID card increases (information creep) as does its use (function creep). Congress recommends that a specific role for the Data Protection Commissioner be provided for in relation to the operation of this section and the collection and use of the biometric data.

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Section 107 and 108 provide that a foreign national shall give such biometric information as may be reasonably required. A person who refuses will be guilty of an offence. Congress believes that the biometric data capable of being gathered should be explicitly specified in the legislation and limited to fingerprint and facial recognition as set out in the COUNCIL REGULATION (EC) No 2252/2004 - 13<sup>th</sup> December 2004 on **Standards for security features and biometrics in passports and travel documents issued by Member States** .

In addition the ICTU is concerned that Section 107 needs to set down adequate and effective safe guards for the sharing of information with other countries. These sections should provide for the application of the Data Protection Acts and again specific provision should be made outlining the role for the Data Protection Commissioner in regard to the operation of these sections.

### Protecting the 'Best Interests of the Child' in the immigration context

In our submission on the 28<sup>th</sup> Amendment on the Constitution – The Rights of the Child, Congress highlighted that the best interests of the child should be a primary consideration in all matters affecting the children, including in immigration matters. We called on the Minister to pay particular attention to the Rights of the Child in the immigration context with special recognition to be given to unaccompanied refugee children and children who have been trafficked. The International Organisation for Migration Report<sup>13</sup> has documented a number of examples of trafficking for forced labour purposes among children. In 2003, there were over 1,000 unaccompanied children seeking asylum and 10% of these

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<sup>13</sup> Trafficking in Unaccompanied Minors in the European Union Member States – Ireland Research Summary, The International Organisation of Migration, Dr Pauline Conroy, Ralaheen Ltd, Dublin. 2003

unaccompanied children were the subject of investigation in relation to criminal trafficking or smuggling by adults.

The Report goes on to outline a number of real examples from Ireland in which children report being subject to forced labour, examples typically include boy children who have been working on building sites and girl children begging while other children talk of their experience of being forced into prostitution.

The Convention on Children's Rights gives children specific rights in this context, Article 19- The right to protection from all forms of harm, neglect and abuse and Article 39- the rights of victims of such abuse to treatment counseling and support, Article 32 and 34 -The right to protection from economic exploitation and sexual exploitation.

Congress is recommending that the Immigration, Residence and Protection Bill 2008 be amended to recognise the special situation of unaccompanied refugee children and children who have been trafficked for forced labour and sexual exploitation purposes and in particular to provide, (i) a secure legal status for child victims for whom no claim of refugee status has been made (ii) ending the accommodation of child trafficking victims in adult hostels or dormitory accommodation in reception centers, (iii) developing opportunities for foster care for child victims among ethnic communities.

## Carrier Sanctions

Section 28 provides for fines and other sanctions to be applied to carriers<sup>14</sup> who transport into the country, unauthorised persons. Internationally trade unions have opposed carrier sanctions. These carrier liability laws are not only troubling from the point of view of refugee rights but they also place inappropriate immigration control responsibilities onto ordinary workers.

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<sup>14</sup> Section 2 provides for a comprehensive interpretation effectively covering all means of transport, airplanes, ships and vehicles, trucks, vans and cars.

Congress welcomes the inclusion in Section 28 (10) that the Minister may draw up and publish guidelines concerning the steps that might be taken by carriers to ensure they are complying with the Bills requirements. Congress is requesting consultation on these guidelines. In practical terms it is the workers, check in staff, truck drivers, operatives who will be required to implement the guidelines and it is essential that their perspective is properly taken into account when formulating the guidelines along with the recommendations of the UNHCR.

We are requesting that the Minister ensure that nothing in this Bill will operate to reduce existing seafarers rights or to reduce the inspection or other rights that protect the health, safety, employment and welfare of crews provided under International Maritime Conventions.

## Conclusion

In conclusion Congress in this submission has called for greater clarity and certainty about the rights, entitlements and obligations of migrants in Ireland. We have asked for amendments that will afford all migrant workers equal rights at work and which will grant all workers, including undocumented workers access to enforce their contract and statutory rights. We have called for the legislation to give entitlements to family reunification and for a rethink on the restrictions on the right to marry. We have called for protection for victims of forced labour and for a regularisation process for undocumented workers. We have outlined our concerns about unfair eligibility criteria for the long term residence permit and we have asked for an independent appeals process. We have highlighted concerns about the proposed ID cards and sought a role for the data protection commissioner in regard to the Card and the use of the biometric data. Finally we have asked for consultation with Congress and our affiliates on the development of a number of secondary

schemes, such as the development of guidelines for on carriers to avoid sanctions, the application of social security and access to public/social services for migrant workers and their families.

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