

Briefing Note for NIC-ICTU Evidence session with Assembly Ad Hoc Committee on a Bill of Rights – 18th March 2021

The Irish Congress of Trade Unions (ICTU) is the trade union federation covering both jurisdictions on the island of Ireland, representing approximately 750,000 workers, with over 200,000 members in Northern Ireland, and several thousand cross border workers.

The Northern Ireland Committee (NIC) of the ICTU is the representative body for 34 trade unions. In membership terms, it is the largest and most diverse civil society organisation in Northern Ireland and the largest organisation of black and migrant workers in both jurisdictions. For more than a decade, women have formed more than 50% of our membership. We form the Trade Union Council of the Isles with the TUC, STUC and Wales TUC and are currently led by women General Secretaries in all 4 federations. Congress is affiliated to the European TUC and the International Trade Union Confederation.

Our affiliated unions cross the public and private sector and a wide range of workplaces.

Congress welcomes the opportunity to engage with the Committee in exploring how to bring forward an inclusive and enforceable Bill of Rights for NI, which has been our policy for more than six decades.

1. Background

Over the past 23 years, the trade union movement's support for the full implementation of the Belfast/Good Friday Agreement, including the Bill of Rights and the Charter of Rights for the island of Ireland, has been unwavering.

Our support for the peace process, the peace agreement, strong inclusive devolved government within a rights-based framework, and our opposition to the opponents of peace has included:

- many mass mobilisations of trade union members in public demonstrations and political lobbies;
- engagement in public consultations;
- continuous engagement with both the UK and Irish Governments to deliver all aspects of the Belfast/Good Friday Agreement;
- international engagement to protect and deliver on the Agreement and;
- working ceaselessly with our allies in the human rights and NGO sectors to promote the importance of equality and human rights through the delivery of the Bill of Rights.

In 1998 we recommended to our entire membership that they vote in support of the Belfast/Good Friday Agreement. The key commitments in the Agreement recognised by Congress as having the potential to create a fair and just future included the provisions on equality of opportunity, human rights, a Bill of Rights for NI (with a particular emphasis on social and economic rights), and a firm commitment to deal with legacy issues and the past. The vast majority of our members voted in favour of the Agreement.

Bill of Rights Forum

From 2007-2008 the ICTU fully engaged in the Bill of Rights Forum via our nominees alongside our civic society allies, the churches, the business community and the political parties. We chaired the largest working group on social and economic rights and the trade union movement was represented on three of the seven working groups in total. Through the Forum, we made robust arguments in respect of trade union rights and social and economic rights being vital components of the Bill of Rights for Northern Ireland.

The eventual advice delivered by the NI Human Rights Commission to the Secretary of State in 2008 included recommendations that a Bill of Rights contain provisions on the right to work, and the right to just and favourable conditions of work, irrespective of the status of a worker.¹

Democratic debate and defence

The ICTU holds both an all-Ireland Biennial Conference and on the alternate year, a Northern Ireland Biennial Conference. Since the signing of the Belfast/Good Friday Agreement, there have been over twenty conferences with delegates reaffirming support for the full implementation of the Belfast/Good Friday Agreement, including the delivery of the promised Bill of Rights and Charter of Rights at every conference.

Work with Civic Society

Congress, and a number of its largest affiliate unions, are full members of both the Human Rights Consortium and Equality Coalition. In these capacities we have campaigned with our partners to make the Belfast/Good Friday Agreement commitments on equality and human rights a reality.²

We fully support the submissions already made by both organisations to the Committee and the 'Make our Future Fair' campaign led by the Consortium to deliver a Bill of Rights.

UK, European and International support

¹ These included the right to equal pay, safe and healthy working conditions, freedom from discrimination and harassment (including taking measures to eliminate all forms of harassment against women), the right to strike, and the right to engage in collective bargaining. These rights are supplementary to those contained within the ECHR, based on various provisions contained within the UN International Covenant on Economic, Social and Cultural Rights, various EU law and International Labour Organisation sources ('A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland' NI Human Rights Commission, December 2008.)

² For example, Congress supported the 'Manifesto for a Rights Based Return to Power Sharing' developed by the Equality Coalition in 2019, which calls for the Bill of Rights to underpin the power-sharing institutions on a more sustainable footing.

The campaign for a Bill of Rights for Northern Ireland and a Charter of Rights for the island is supported by the trade union federations across the UK, the EU and Internationally. The Council of the Isles has consistently called for the full implementation of the Belfast/Good Friday Agreement. The ETUC has also recognised the importance of protecting the rights of Northern Ireland's citizens with a Bill of Rights. The trade union movement has received consistent support from our allies in the labour movement in the US on these issues.

2. Areas for discussion

Congress recognises that the landscape within which the Committee is now examining the creation of a Bill of Rights is different from that which existed at the time the Belfast/Good Friday Agreement was reached. However it remains our view that the Bill of Rights should be legislated for via the UK Parliament at Westminster, in line with the intention of the Belfast/Good Friday Agreement.

We have set out below some core issues we would request that the Committee considers during its deliberations:

Brexit and workers' rights

From the point at which the EU referendum was called in 2016, Congress has been concerned by the potential impact that a UK exit from the EU could have on protecting the rights of workers in Northern Ireland, one of the key reasons why Congress called for a vote to remain. EU law has long underpinned a range of key employment and anti-discrimination laws. As the Brexit process unfolded, our concern was that outside of the EU, future Governments could seek to weaken or erode these rights over time, and that there will be divergence between standards as EU law further develops.

Despite the commitment to no diminution of rights, safeguards and equality of opportunity in Northern Ireland and the 'keeping pace' commitments in article 2 of the Northern Ireland Protocol, we are already seeing divergence in important equality infrastructure. Keeping pace applies to a narrow range of existing Directives and will not apply to important new Directives such as the Work Life Balance Directive and the upcoming Gender Pay Transparency Directive.³

During the process of negotiating the EU-UK Trade and Cooperation Agreement (TCA), it became increasingly clear that the UK Government was unwilling to commit to 'level playing field' provisions guaranteeing workers' rights. The final TCA contains only weak commitments in these areas, primarily not to lower current levels of labour and social protections to the extent that any reductions may affect trade or investment.⁴ There is no commitment to 'dynamic alignment' between the EU-UK over time. The potential that rights in these areas will therefore be eroded has only increased, since proving that reductions in rights for workers has negatively impacted on trade or investment may be extremely challenging.

Employment and equality laws are devolved to the NI Assembly and since the referendum, Congress has been working with civic society to seek that the Assembly

³ <https://www.gov.uk/government/publications/protocol-on-irelandnorthern-ireland-article-2>

⁴ Chapter Six: Article 6(2).

retains the ability to introduce stronger protections for workers, free from any attempt by the UK Government to claw back powers in this regard.⁵

Implementing the commitment to a Bill of Rights for Northern Ireland provides an opportunity to retain and protect current rights derived from EU law and prevent these rights being weakened and eroded.

Further consideration will now need to be given as to how best to protect the widest possible range of workers' rights through the Bill of Rights process. This should include consideration of the commitments made within the 'New Decade, New Approach' agreement on protecting workers' rights and enhancing employment laws, such as through banning zero-hours contracts.

Economic and social rights and the impact of Covid-19

Covid-19 has had, and continues to have, a major social and economic impact on workers, their families and their communities across Northern Ireland. It has disproportionately impacted on the poorest and most deprived communities, once again highlighting the economic inequalities that have affected Northern Ireland for many years.⁶ High levels of confirmed redundancies have already occurred and the economic inactivity rate has increased, as has demand for working age benefits. Congress fears this situation will only grow worse as the furlough scheme comes to an end.

ICTU has highlighted that radical economic interventions that may have seemed unthinkable in the past have been made to mitigate against the shock of Covid-19 and is clear that there can be 'no going back' to the economic and social conditions that existed in Northern Ireland pre Covid-19. Congress has issued detailed proposals on the measures required in terms of health, social care, social protection, education, housing, poverty, the rights of workers and taxation and public spending that should be taken to ensure a new deal for our society as we emerge from Covid-19.⁷

The UN Committee on Economic, Social and Cultural Rights has called for States to ensure that the mobilisation of resources to address the COVID-19 pandemic provides the impetus for long-term resource mobilisation towards the full and equal enjoyment of the economic, social and cultural rights enshrined in ICESCR. The Committee calls for substantial investments in the institutions and programmes necessary for the realisation of economic, social and cultural rights, to ensure that the world is better prepared for future pandemics and disasters.⁸

⁵ For example, during the period the Internal Market Bill was being passed through Parliament, Congress raised concerns that its provisions could be used to impede the development of employment, equality or anti-discrimination laws, areas which are devolved in Northern Ireland. Subsequently, UK Government Minister Lord Callanan wrote to Baroness Ritchie following debate on the Bill in the House of Lords on 18th and 23rd November offering some assurances in this regard.

⁶ For example, the infection rate in the 10% most deprived areas has been almost two-thirds higher than the rate in the 10% least deprived areas (Coronavirus related health inequalities – December 2020 (Department of Health))

⁷ 'No Going Back – A New Deal Towards a Safe and Secure Future for All' (May 2020)

⁸ 'Statement on the coronavirus disease (Covid-19) pandemic and economic, social and cultural rights', United Nations Committee on Economic, Social and Cultural Rights, 17th April 2020.

We would support the position adopted by the Equality Coalition in its submission to the Committee in relation to economic and social rights, which highlights that the rights in question have largely been committed to by the UK within international law, and that in general the objective with such rights is that they are ‘progressively realised’ over time to the maximum extent of available resources, subject to certain minimum core obligations that are immediately enforceable.⁹ We further note the research commissioned by the NI Human Rights Consortium from the Human Rights Centre at Queen’s University Belfast, which explores the different models of enforceability for socio-economic rights. It notes that such rights were included within the NI Human Rights Commission’s advice in 2008 and that currently, there is a patchy approach to the protection of such rights in Northern Ireland that falls short of the requirements of international standards.¹⁰

As society seeks to recover from the impact of the pandemic, a strong equality and human rights framework should underpin key policy decisions being made by Government. Congress believes this would help the devolved institutions, acting as both a benchmark and safeguard in the exercise of Executive and legislative powers. A strong focus on social and economic rights within the Bill of Rights can assist greatly in a fair recovery that addresses inequality within our society.

Review of the Human Rights Act 1998

The UK Government has initiated a review of the operation of the Human Rights Act 1998 (HRA), within the context of the longstanding policy of the UK Conservatives to replace or amend the Act. The incorporation of the European Convention on Human Rights (ECHR) into Northern Ireland law, including direct access to the courts and remedies for breaches, is a core provision of the Belfast/Good Friday Agreement, and is currently provided for via the HRA. Congress is concerned that changes or weakening of the HRA would contravene the Belfast/Good Friday Agreement, are unnecessary and could destabilise the peace settlement.

Congress is further concerned by the potential that this review has to cut across the work of this Committee to consider a Bill of Rights for Northern Ireland that would supplement the ECHR. We would urge that the Committee see the ECHR, as given effect in domestic law through the HRA, as the minimum human rights framework that should apply in Northern Ireland.

3. Conclusion

ICTU welcomes the renewed focus on the Bill of Rights that the Ad Hoc Committee has brought. Whilst we also recognise the importance of gathering evidence from key stakeholders and civic society, we would point out that there is a huge body of evidence over two decades plus from all of these actors which richly indicates the collective unwavering commitment that exists for the delivery of a rights-based society.

⁹ ‘Written Evidence to the NI Assembly Ad-Hoc Committee on the Bill of Rights from the Equality Coalition Co-Conveners’ Equality Coalition, October 2020.

¹⁰ ‘Economic and Social Rights in Northern Ireland: Models of Enforceability’ Human Rights Centre, Queen’s University Belfast, November 2020.

A Bill of Rights for Northern Ireland is no less relevant today as it was 23 years ago in 1998. Indeed, with the realisation of Brexit, and attacks on the Human Rights Act and workers' rights by the Conservative Government appearing imminent, it is now more important than ever.