

SUBMISSION TO DR. RICHARD HAASS AND THE PANEL OF PARTIES IN THE NI EXECUTIVE ON PARADES AND PROTESTS; FLAGS, SYMBOLS AND EMBLEMS AND RELATED MATTERS; AND THE PAST

INTRODUCTION

The Irish Congress of Trade Unions (ICTU) represents workers and their families on the island of Ireland. Uniquely in Europe ICTU spans two jurisdictions. It represents approximately 775,000 workers throughout Ireland, including 215,000 workers in Northern Ireland.

Congress is the largest and most politically and culturally diverse civil society organisation on the island of Ireland. We have played an active role for many years in the pursuit of peace, equality and pluralism as defined by the United Nations:

“In our increasingly diverse societies, it is essential that persons and groups having plural, varied and dynamic cultural identities should live together in harmonious interaction and proper accord. Policies that seek the integration and participation of all citizens are an earnest of social cohesion, vitality of civil society and peace. Defined in this way, cultural pluralism is the policy offshoot of cultural diversity. Since it is inseparable from a democratic context, cultural pluralism is conducive to cultural exchange and the flowering of the creative potential that sustains life in society”.

Congress also advocates on behalf of our members families and their communities. Consequently, we believe it is our responsibility to also speak out for the significant section of our society classed as “economically inactive” and who belong to the areas and groups of greatest need. The majority of people in this category have not significantly benefited from the peace process. In large part they suffer adverse impact as a consequence of historic and persistent patterns of discrimination which were to have been eradicated as a consequence of the peace process, but have not been significantly challenged. There are a number of empirical studies which evidence the continued marginalisation of working class communities incorporating both sides of the divide specifically on health, education, housing and other public service delivery.

Congress and its affiliates have been in the vanguard of the enactment of pieces of equality legislation in Northern Ireland such as:

- Equal Pay Act 1970 (Northern Ireland) 1970 (as amended)
- Sex Discrimination (Northern Ireland) Order 1976 (as amended)
- Fair Employment and Treatment (Northern Ireland) Order 1998 (as amended)
- Northern Ireland Act 1998
- Equality (Disability, etc) (Northern Ireland) Order 2000

Throughout the conflict Congress has been to the fore of ensuring that the unrest did not spill over into workplaces. Congress has been universally recognised as a trusted independent civil society body as exemplified by the huge support it has achieved through the holding of public rallies against sectarian murder irrespective of who the perpetrators were and are.

In 1993, Congress, in collaboration with Confederation of British Industry NI, issued a joint declaration of protection for all workers in employment by declaring that “discrimination or victimisation in employment is unlawful and unacceptable and that every employee has the

right to work free from intimidation or harassment on the grounds of religious belief or political opinion". That joint declaration went further, stating:

"The company declares that its premises shall be a neutral working environment. It therefore prohibits the display of flags, emblems, posters, graffiti or the circulation of any material or deliberate articulation of slogans or songs which are likely to give offence or cause apprehension to a particular group of employees."

The CBI and NIC-ICTU went further by agreeing that the following sanction would apply for anyone engaged in discrimination, intimidation, victimisation or harassment as follows:

"Jointly condemn intimidation or harassment by word or actions, and commit themselves to take all reasonable steps to secure the safety of employees from intimidation or harassment in the workplace by persons of other religious beliefs or political opinion. Such intimidation or harassment should be regarded as an offence of gross misconduct which may warrant dismissal."

In 1998 we recommended to our entire membership that they vote in support of the 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 socio-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.

Since political devolution we have supported the political process by constructively engaging with elected representatives; by returning to public campaigning in support of the peace process during the periods of suspension of the NI Assembly; and by bringing workers onto the streets in significant numbers on several occasions in response to those who have sought to undermine the peace process through acts of violence and intimidation.

Congress has also been engaged in embedding the peace process through practical action, e.g.:

- Acting as facilitators for decommissioning;
- Facilitating agreement between the Northern Ireland Prison Service and Republican prisoners in Maghaberry Prison;
- Chairing talks in an attempt to find a resolution to certain sensitive parades;
- Congress continues through its partner body Trademark (previously Counteract) to engage in workplace training on all elements of diversity, anti-sectarianism and anti-racism;
- Established a trade union campaign for equality and education arising from the publication of *A Call to Action: Educational Disadvantage and the Protestant Working Class*.

Congress is a full member of the civic society umbrella organisations the Equality Coalition and the Human Rights Consortium and in these capacities we have campaigned with our partners to make the GFA commitments on equality and human rights a reality.

From 2007-2008 we fully engaged in the Bill of Rights Forum, 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. Throughout that process we witnessed constructive engagement by all participants but a deeply disappointing opposition to equality and human rights by the unionist parties at the conclusion of the process.

At the Bill of Rights Forum all key stakeholders deliberated on issues including parades and protests, flags, symbols and related matters, cultural identity, and the rights of victims and survivors who were all the subject of extensive engagement. We recommend the dialogue continue.

Our allies in the Committee on the Administration of Justice (CAJ) and the Practice and Participation of Rights Project (established under the auspices of ICTU) and the Human Rights Consortium) have already produced their submissions to this process. They have our support.

CONTEXT

Congress is concerned that 15 years after those days of hope for the future we now face an extensive roll-back on the state's equality obligations; an abject failure by the British Government to introduce a Bill of Rights for NI; and the complete failure of the local administration to introduce a comprehensive, inclusive and supported process for dealing with the past and legacy issues. This situation is:

- Undermining the peace process;
- Creating dysfunction in Government decision-making;
- Deepening inequality for areas and groups of greatest need;
- Attacking and attempting to sectarianise long accepted equality and human rights criteria for resource allocation such as objective need;
- Creating a void in society which is being filled by extreme elements and increasing sectarianism.

In June 2013 US President Barack Obama stated that there were people in our society who had not **"reaped the rewards of peace"**. He emphasised that there was still much work to do and he particularly emphasised that; **"lack of jobs and opportunities.....are not tangential to peace; they are essential to it"**.

The Irish Congress of Trade Unions takes this as clear recognition of the need to address the current and persistent patterns of inequality in mainstreamed, time-bound and targeted initiatives.

15 years after the Good Friday Agreement the evidence of a roll-back on commitments to equality and human rights and the unfulfilled commitment on dealing with the past is overwhelming.

One of the starkest realities is the reduction in life expectancy for people from the most disadvantaged groups and areas. The creation of a just and equal society was what the people signed up to 15 years ago. In 2013 however, men living in the 10% most deprived areas here can expect to live almost 12 years less than those living in the 10% least deprived areas. For women, the gap is more than 8 years.

The elephant in the room is the complete resistance of current Government to comply with the law of the land and produce an Equality Impact Assessment of health inequalities, most especially on the basis of religious belief and political opinion. It is our belief that this is being deliberately avoided in order to disguise the fact that the failure to deliver on the GFA commitments has copper-fastened inequality and the patterns of discrimination.

In the period 1966 to 1999, 3636 deaths are recorded as a consequence of the conflict. Since the peace agreement there have been over 3000 suicides. Suicide, with a 234% gap between the most and least deprived areas, is inextricably linked with poverty,

unemployment and the legacy of the conflict. Rates have soared since 1998 with a total of 313 suicides recorded in 2010 alone – the highest figure ever recorded in Northern Ireland.

The right to health, education, housing, work social security, an adequate standard of living and to public services including social care, are fundamental human rights which are increasingly being denied to a large section of the people of NI. Throughout our peace process people are dying from what the Institute of Public Health and the World Health Organisation describes as “a preventable disease – inequality”. This is perhaps the greatest failing of our current political system. Had the tools of equality and human rights been utilised in a fashion which placed them above party politics, we would today have different and better outcomes.

PARADES AND PROTESTS

Congress fully supports the right of all to parade, the right to protest and counter protest. As this matter is essentially a civil right, Congress fully supports that decision making in these matters continues to be undertaken by an independent body. Current regulations are incorporated in the Public Processions (NI Act) 1998 (PPA) which empowers the Parades Commission to take decisions on restrictions on parades and counter protests. Congress is fully committed to the right of freedom of assembly but has concerns over how our legislation currently deals with the disruption to community life and the adverse impact on relations both within and between communities.

Having deliberated on how improvements on these matters could be implemented in Northern Ireland Congress recommends the following:

- As a genuine mark of respect for those who live in areas where various organisations seek to parade, it should be mandatory where inter-community protests may develop, that both the marching organisations and the local community groups engage in dialogue.
- Such talks should be chaired by experienced facilitators to achieve an agreed resolution prior to submission to an independent body for adjudication. (The facilitator should be accepted by both groups.)
- Facilitators should report to the independent body on the genuine attempts by both parties to seek a resolution.
- Based on the facilitators’ report the independent body will then make a determination. It is an imperative that such a determination is enshrined in legislation and supported by all political parties and members of civic society.

However, Congress supports the views expressed by Maina Kiai, the UN special rapporteur on the Rights to Peaceful Assembly and of Association, Mission to the United Kingdom of Great Britain and Northern Ireland, 29 May 2013. The special rapporteur emphasises that the decisions of the Parades Commission should be fully rooted in the human rights framework as this constitutes an objective and justifiable means of balancing the competing interests inherent in the process. Furthermore, this report stresses the positive role of civil society organisations in facilitating dialogue between communities. It is instructive to read that Maina Kiai also calls on the competent authorities to:

“Ensure that blatant and provocative violations of the parade commission’s determinations are prosecuted”.

Congress is of the opinion that any violation of an independent bodies determination in this area requires sanctions but supports the CAJ view:

“CAJ recommends a policy framework be introduced to ensure that powers to sanction persons for un-notified processions / counter protests, or related offences, are exercised in a consistent and ECHR compatible manner”.

FLAGS & EMBLEMS

Congress fully endorses the view as cited in ‘A Shared Future’ (2005), that *“developing and protecting town and city centres as safe and welcoming places for people from all walks of life.....freeing the public realm from threat, aggression and intimidation while allowing for legitimate expression of cultural celebration”.*

Congress is fully cognisant of the sincere emotional attachments illustrated by citizens across Northern Ireland to flags, symbols and emblems. NIHRC Advice (2008) states:

“Public authorities must fully respect, on the basis of equality of treatment, the identity and ethos of both main communities in Northern Ireland. No one relying on this provision may do so in a manner inconsistent with the rights and freedoms of others”.

Congress concurs with the view of the ECHR in referring to “the hallmarks of a democratic society” infers that democracy does not simply mean that the view of the majority must always prevail in this context. However in the context of the flying of what is deemed the ‘Union Flag’, Congress agrees with the Flags Regulations (Northern Ireland) 2000 which applies primarily to those buildings occupied “wholly or mainly” by “members of the Northern Ireland Civil Service” and not Local Government.

In the general Guideline context (P18 of the NIHRC Paper):

“States should promote integration by respecting the claims and sensitivities of both minority and majority groups regarding the display and use of symbols in shared public space. While being mindful of freedom of expression, States should avoid the divisive use of symbols and discourage such displays by non-States actors. Where appropriate, opportunities to promote inclusive symbols should be sought”.

Congress accepts the OSCE’s Ljubjana Guidelines on Integration of Diverse Societies which recognise that the “inappropriate use of symbols can cause tensions and incidents that can escalate into conflict and intercommunity violence”. They suggest, which we fully support, that in respect of flags and emblems displayed on local government buildings, that “based on principles of inclusiveness and good governance achieving a balance between the reasonable interests of all groups in society”. Congress believes that the Union Flag should be flown on Local Government buildings on the designated days as applies to the Northern Ireland Assembly Building.

Congress has no immediate solutions to the display of flags, emblems and symbols on lampposts, kerbs, etc. We are experienced enough to know that it is terribly unfair, if not downright dangerous, to allocate the responsibility of removing such material to local council workers. The responsibility for ensuring that public property regaled with emblems, etc., which may cause offence to others working, shopping or going about their lawful business in that location and for whom such regalia cause offence should be dealt with under legislation enacted by the State. It should also be the responsibility of investors, shareholders and business proprietors to ensure that their enterprises are not utilised for the display of offensive regalia. This was exemplified in Belfast by a decision to ensure that a local branch of KFC would lose its franchise if it did not remove offensive graffiti. This is a matter which

may well fall under what could be construed as sectarianism however it has been a failure in Northern Ireland that there is no legal definition of sectarianism other than the ECRJ definition of racism which when replacing the word racism for sectarianism reads as follows:

“Sectarianism shall mean the belief that a ground such as religion, political opinion or language, nationality, or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons”.

It would be our view that the term ‘culture’ should be included in this draft definition for enactment and legislation in Northern Ireland.

LEGACY OF THE PAST – TRANSITIONAL JUSTICE

It is the view of Congress that it is quite evident that many in Northern Ireland, and other external actors, believe that there are two views of how to deal with the issue; one is best described as drawing a line in the sand and moving on. It is our considered opinion that this is not a sustainable strategy towards building the peace process in Northern Ireland. Congress views the treatment of the Eames/Bradley Consultative Group on the Past had some very good recommendations but unfortunately were lost in emotional response to their view on reparation for victims. Congress agrees with the viewpoint of the OHCHR, (Reparations Programme 12):

“Compensation is important but reparations work best when seen as part of a comprehensive justice policy, rather than as an isolated effort. The situation was worse when this is the only redress on offer, with no truth telling, criminal prosecutions or significant institutional reforms. This may give the impression that reparations are a bribe to buy the silence or acquiescence of the victims”.

It is obvious from a review of past bodies established, both judicial and non-judicial, that the legacy of the past incorporating four major principles, e.g., truth, justice, accountability and redress, are still outstanding and inhibit an acceptance of building a just and peaceful Northern Ireland. In that context, there appears to be a competition for the establishment of a hierarchy of victims. Congress believes that this is an impossibility and a barrier to progress. There are many types of victims arising from the conflict in Northern Ireland other than those who have been killed, injured or members of extended families of these categories.

Congress acknowledges there are many people in NI suffering from Post Traumatic Stress Disorder allied to a huge range of mental health issues arising from the negative impact of trauma inflicted or sustained by immediate family members, extended family members or indeed those who have witnessed violent related actions. Congress also acknowledges that there are a large number of campaigning groups from both the major communities seeking truth/investigation into particular actions or circumstances which for them demands closure.

To attempt to compile a hierarchical table of victims is beyond the competency of any lay person. Congress is of the view that to build on the peace in Northern Ireland, the buy-in of the vast majority of Northern Ireland citizens is essential. We are of the opinion that both the NIHRC and the CAJ indicate a way ahead in the conclusions and recommendations of their respective documents: *Dealing with Northern Ireland’s Past - Towards a Transitional Justice Approach* (pp. 17 & 18) and the Independent CAJ Recommendations to the Multi Party Group on *Dealing with the Past – Investigating Troubles-Related Deaths*.

CONCLUSION

NORTHERN IRELAND COMMITTEE – IRISH CONGRESS OF TRADE UNIONS (NIC-ICTU)

Congress appreciates the huge volumes of submissions which you are receiving, many of which will deal with the adverse economic impact which inter-communal violence creates. Congress shares this view and could comment at length on this particular issue, but is of the opinion that in order to create economic growth we must have a peaceful and stable society, based on a foundation of equality and human rights.

The lack of jobs and investment in Northern Ireland and austerity measures being imposed on the Northern Ireland Assembly by the Westminster Government has created a stagnant economic environment. Since 2008, we have witnessed a huge attack on public services on which the most marginalised totally depend. This has resulted in many working class areas being denied any sign of a peace dividend. Indeed their lifestyle and life chances have diminished.

At present the UK Government is exerting pressure on the Executive to introduce sweeping changes in the Welfare system which creates further adverse impact on areas and groups of greatest need thus reinforcing patterns of discrimination. The UK government is also stating that it will impose financial sanctions in this regard. This is unacceptable from a signatory of the Peace Agreement. Pressure must instead be exerted on the UK government to fulfil its outstanding obligations by delivering a strong and inclusive Bill of Rights.

An unemployed rate among young people of 24.7% acts as the greatest recruiting sergeant for paramilitary groups in both main communities. This argument can be easily discerned through an analysis of the locations from which violence and protests emanate. The trade union movement across Northern Ireland will continue to pursue policies of embedding peace in pursuit of a society rooted in equality and justice for all, this demands:

- All political parties to sign up to the Peace Process.
- Dysfunctional government in terms of decision making and party political interest must cease.
- Urgent attention must be paid to the direction of resources to those who have not benefited from the Peace Process. Such rationale should be based on objective need and not that of partisan party political splits of resources.

For the purposes of record we would like to remind the panel that the people of Northern Ireland voted overwhelmingly for the provision in the GFA (paragraph 1. (v) page2) which provides;

“.....the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and parity of esteem and of just and equal treatment for the identity, ethos, and aspirations of both communities”.....

NORTHERN IRELAND COMMITTEE – IRISH CONGRESS OF TRADE UNIONS

4 December 2013