



Tithe an Oireachtais

An Comhchoiste um Dhlí agus Ceart, Cosaint  
agus Comhionannas

Tuarascáil ar Aitheantas d'Eitneacht an Lucht Siúil

Aibreán 2014

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Houses of the Oireachtas

Joint Committee on Justice, Defence and Equality

Report on the Recognition of Traveller Ethnicity

April 2014

**31/JDAE/013**

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## **Chairman's Foreword**

The Joint Committee on Justice, Defence and Equality agreed to undertake an examination on the recognition of Traveller Ethnicity.

Deputy Pádraig Mac Lochlainn agreed to act as Rapporteur on this matter and bring forward a Report for the consideration of the Committee.

The Committee considered a number of written submissions it had received and held three public hearings with a number of stakeholders to consider the issues in more detail.

The Joint Committee would like to acknowledge the enormous amount of time and personal effort given by Deputy Mac Lochlainn into preparing this Report.

I would also like to acknowledge the contribution made by the members of the Committee throughout the period this matter was under consideration.

The Joint Committee would like to thank all the witnesses who attended at public hearings to give evidence and to those who took the time to make written submissions.

The Joint Committee, at its meeting of 16 April 2014, considered the Rapporteur's Report and the recommendations therein. The Joint Committee agreed to adopt this Report and that a copy of the Report be forwarded to the Minister for Justice and Equality.



A handwritten signature in black ink, which appears to read 'David Stanton', written over a horizontal line.

David Stanton TD  
Chairman  
April 2014

## **BACKGROUND**

The Oireachtas Joint Committee on Justice, Defence and Equality undertook in 2013 to carry out a report on the recognition of Traveller ethnicity and to make recommendations to the Minister for Justice and Equality, Alan Shatter and his Department as part of their on-going deliberations on the matter.

### **Work of the Committee:**

The Committee held three public hearings during 2013.

The full transcripts of the three public meetings are printed and contained in Appendix 4 of this report.

The Committee also visited Clondalkin Travellers Development Group and Blanchardstown Traveller Development Group to hear their perspectives on Traveller ethnicity on 13<sup>th</sup> February 2014.

### **Meetings with Stakeholders**

#### **17<sup>th</sup> April 2013 Committee Hearing**

Irish Travellers Movement (Ms Brigid Quilligan, Director, Ms Susan Fay, Managing Solicitor and Ms Jacinta Brack, Communications Coordinator)

Pavee Point (Ms Ronnie Fay and Martin Collins, Directors)

#### **12<sup>th</sup> June 2013 Committee Hearing**

Dr Robbie McVeigh

Dr Jim MacLaughlin

#### **13<sup>th</sup> November 2013 Committee Hearing**

Irish Human Rights Commission (Ms Sinéad Lucey)

Equality Authority (Mr Laurence Bond)

## **RAPPORTEUR'S PREFACE**

The Minister for Justice and Equality, Alan Shatter TD has stated that he is aware of calls for the Government to consider granting Traveller ethnicity in the context of international conventions to which Ireland is a party. Against that background, he has undertaken to give serious consideration to the issue.

As part of that consideration by the Minister, a conference on the subject of Ethnicity and Travellers: An Exploration was convened by the National Traveller Monitoring and Advisory Committee with support from the Department of Justice and Equality in September 2012.

That Conference provided an opportunity for various aspects of the issue of ethnicity to be discussed and built on earlier discussions within the framework of National Traveller Monitoring and Advisory Committee on the issue. That Committee brings together all of the national Traveller organisations as well as senior officials from relevant Government Departments. The report from that Conference now forms part of the ongoing consideration of the issue.

The Department of Justice and Equality has in parallel been engaging with other Government Departments on the issue by way of identifying any possible implications arising from the recognition of Travellers as an ethnic group. Those consultations are continuing.

The Oireachtas Joint Committee on Justice, Defence and Equality (hereinafter the "Joint Committee") undertook in 2013 to carry out a report on the recognition of Traveller ethnicity and to make recommendations to the Minister for Justice and Equality, Alan Shatter and his Department.

The Joint Committee is mindful that there are a plethora of reports pertaining to the travelling community in Ireland over the last 50 years. However, the remit of the Joint Committee's deliberations was solely limited to the subject of Traveller ethnicity and its recognition in this State.

In reaching our conclusions and recommendations, the Joint Committee drew upon the overwhelming evidence in favour of Traveller ethnicity, provided to the Joint Committee at its hearings and visits and from the following reports in particular:

- The Irish Human Rights Commission (IHRC) discussion paper (2004) on Traveller ethnicity: *Travellers as an ethnic minority under the Convention on the Elimination of Racial Discrimination: A Discussion Paper*.  
[http://www.ihrc.ie/download/pdf/travellers\\_discussion\\_paper2004.pdf](http://www.ihrc.ie/download/pdf/travellers_discussion_paper2004.pdf)
- The Equality Authority research report (2006) on Traveller ethnicity entitled: *Traveller Ethnicity: An Equality Authority Report*.  
<http://www.equality.ie/Files/Traveller-Ethnicity-DOC.doc>
- The IHRC submission (2013) to government on Traveller ethnicity; *Submission on the Recognition of the Traveller Community as an Ethnic Minority in the State*  
[http://www.ihrc.ie/download/pdf/traveller\\_ethnicity\\_recognition\\_january\\_2012.pdf](http://www.ihrc.ie/download/pdf/traveller_ethnicity_recognition_january_2012.pdf)
- The Irish Travellers Movement submission (2013) to our committee on the *Recognition of Traveller Ethnicity*  
[http://itmtrav.ie/uploads/publication/ITM\\_Submission\\_to\\_the\\_Joint\\_Oireachtas\\_Committee\\_on\\_Recognition\\_of\\_Traveller\\_Ethnicity.pdf](http://itmtrav.ie/uploads/publication/ITM_Submission_to_the_Joint_Oireachtas_Committee_on_Recognition_of_Traveller_Ethnicity.pdf)

The recommendations outlined in this report should now be acted upon swiftly. It is no longer tenable for this State to deny Traveller ethnicity.

It is long past time for this State to fully honour our responsibilities to the international conventions on human rights and to truly value and protect our Traveller communities.



Pádraig Mac Lochlainn TD  
Rapporteur  
April 2014

## **RECOMMENDATIONS**

The Joint Committee on Justice, Defence and Equality recommends the following:

Step 1:

That either the Taoiseach or the Minister for Justice and Equality make a statement to Dáil Éireann confirming that this State recognises the ethnicity of the travelling community.

Step 2:

That the Government then writes to the relevant international bodies, confirming that this State recognises the ethnicity of the travelling community.

Step 3:

That the Government build on these initiatives and commence a time-limited dialogue with the Traveller representative groups about the new legislation or amendments to existing legislation now required.

## **OVERVIEW AND RATIONALE FOR RECOMMENDATIONS**

It is clear that the national policy debate has moved from the conclusion of the Commission on Itinerancy in 1963 that Travellers do not constitute an ethnic group to the introduction of a definition of Travellers in the Equal Status Acts that effectively recognises Traveller ethnicity.

However, despite repeated recommendations from international bodies such as The Joint Committee on the Elimination of Racial Discrimination and our own domestic bodies tasked with promoting and protecting the human rights and equality rights of all of our citizens, this State has yet to explicitly and formally recognise Traveller ethnicity.

The Joint Committee examined these matters in great detail over the course of three hearings of the Joint Committee with a range of relevant stakeholders and the evidence in favour of the recognition of Traveller ethnicity was overwhelming.

### **Historical overview**

The first major policy report in this State on Travellers was the Report of the Commission on Itinerancy (1963). The Commission was established in June 1960 and the publication of the report of the Commission three years later established policy relating to Travellers for the next twenty years.

The four terms of reference for the Commission were:

- (1) To enquire into the problem arising from the presence in the country of itinerants in considerable numbers
- (2) To examine the economic, educational, health and social problems inherent in their way of life
- (3) To consider what steps might be taken:
  - (a) to provide opportunities for a better way of life for itinerants;
  - (b) to promote their absorption into the general community;



(c) pending such absorption, to reduce to a minimum the disadvantage to themselves and to the community resulting from their itinerant habits.

(4) To make recommendations.

The language used in the terms of reference was instructive as to the State's ideological approach to the travelling community at that time. It is also instructive that no representatives of the travelling community sat on the Commission.

In its report, the Commission asserted: *"Itinerants (or Travellers as they prefer themselves to be called) do not constitute a single homogenous group, tribe or community within the nation although the settled population are inclined to regard them as such. Neither do they constitute a separate ethnic group"* (p.37)

They reached this conclusion without any apparent explanation or evidence provided.

In their 2013, 50<sup>th</sup> anniversary review of the Commission on Itinerancy Report, the Irish Travellers Movement (ITM) pointed out that in chapter 6 of the report, the Commission states *"as it was not essential to the consideration of the Commission's terms of reference, no special study was made of the origins of the itinerant population of this country"*; the Commission is aware that *"a period of long research"* would be needed to answer this question and this is a job for *"trained historians"*.

Despite these acknowledgements, the Commission resolutely rejected the ethnicity of Travellers.

The approach and recommendations found in the 1963 Report of the Commission on Itinerancy remain deeply offensive to Travellers and are largely rejected by modern day Ireland but the insistence by the State on not recognising the ethnicity of Travellers remains.

## **Ethnicity denial**

This State has maintained a position for decades that amounts to ethnicity denial without having presented any evidence based defence of this position to our international partners and indeed the travelling community.

In the absence of clearly articulated arguments in defence of this policy, the Joint Committee has examined a number of the potential excuses or concerns with the stakeholders and expert witnesses who gave evidence to the Joint Committee.

In his evidence, Dr Robbie McVeigh stated *“there have been three arguments in opposition to Traveller ethnicity. The first is that it would not be good for Travellers and that it would be politically reactionary. The second is that it would be just too costly for the State to recognise Traveller ethnicity. The third, the one I will engage with substantially and which we can discuss, is that Traveller ethnicity is not proven”*.

Laurence Bond from the Equality Authority testified: *“A factor we addressed in our report (Traveller Ethnicity 2006) was the suggestion that there is some academic reason for failing to grant recognition. We found this did not hold. A further issue that may have arisen is the idea that there must be universal consensus. This does not hold either. I have come across a suggestion that it is not so much an issue of principle but that there is a risk of significant costs. I cannot see where they come from”*.

A summary of the potential excuses or concerns as identified are:

- It's not in the best interests of Travellers
- Granting Traveller ethnicity would be too costly to the State
- Traveller ethnicity is not proven
- Academic reasons
- The need for full consensus amongst Travellers

The Joint Committee agreed with those who gave evidence to the Joint Committee and found each potential excuse or concern to be unsustainable when tested.

### **It's not in the best interest of Travellers**

The Joint Committee accept that the representatives of the travelling community are best placed to know what is in their best interests and the support for the recognition of Traveller ethnicity from all four national Traveller organisations and the 99% support of Travellers in attendance at the 2012 conference organised by the National Traveller Monitoring Advisory Committee surely reflects their judgement on the question.

The evidence given to the Joint Committee by the Irish Travellers Movement and Pavee Point at our first public hearing (Appendix 4 of this report) and what we heard from the members of the travelling community that we met during our visits to the Clondalkin Travellers Development Group and the Blanchardstown Traveller Development Group confirmed that support.

### **Granting Traveller ethnicity would be too costly to the State**

The Joint Committee would point out that cost should not be a barrier to the State doing what is right by all its citizens or act as a barrier to justice or equality.

However the Joint Committee accepts the analysis of Laurence Bond from the Equality Authority who advised, when asked by the Joint Committee Chairman about the cost to the State: *“I have heard it suggested that to recognise ethnicity would expose the State to significant additional costs above what is already spent on Traveller policy, which is significant. I can clearly see how recognition of ethnicity may have implications for rethinking how some of the money we currently spend is used, what is prioritised and what is not. However I have tried to think about what significant additional costs there could be and I cannot see what they would be”*.

### **Traveller ethnicity is not proven**

The Joint Committee was struck by the evidence of two expert witnesses in this regard, Dr Robbie McVeigh and Sínead Lucey from the IHRC.

In particular their references to UK case law in and most notably, the landmark ***Mandla v. Dowell Lee [1983]*** where the House of Lords considered the meaning of the terms “ethnic origins” and “ethnic group”. The crux of the case was whether Sikhs were a distinct racial group as envisaged by the Race Relations Act. This depended on whether Sikhs could be seen as a distinct group from other people who came from the Punjab region of India even if they did not differ from who did not differ from them in colour, language or “race” as traditionally understood.

Lord Fraser gave the leading judgement and in doing so devised the Mandla test which is still used today.

He said that: “For a group to constitute an ethnic group in the sense of the Act of 1976, it must, in my opinion, regard itself, and be regarded by others, as a distinct community by virtue of certain characteristics.

Some of these characteristics are essential; others are not essential but one or more of them will commonly be found and will help to distinguish the group from the surrounding community. The conditions which appear to me to be essential are these:

- (1) a long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive;
- (2) a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance;

in addition to these two essential characteristics, the following characteristics are in my opinion, relevant:

- (3) either a common geographical origin, or descent from a small number of common ancestors;
- (4) a common language, not necessarily peculiar to the group;
- (5) a common literature peculiar to the group;
- (6) a common religion different from that of neighbouring groups or from the general community surrounding it; and
- (7) being a minority or being an oppressed or a dominant group within a larger community ...”

Using these criteria (the Mandla test), he held that Sikhs “are a group defined by a reference to ethnic origins for the purpose of the Act of 1976, although they are not biologically distinguishable from the other peoples living in the Punjab”.

This test was used in a number of cases including the ***Commission for Racial Equality v. Dutton [1989] 2WLR 17*** which determined that English gypsies constituted a racial group under the Act. Lord Justice Nicholls applied the *Mandla v. Dowell Lee* test that there was sufficient evidence to establish that “gypsies are an identifiable group of persons defined by reference to ethnic origins within the meaning of the Act.”

In the case of ***O’Leary & Others v. Allied Domecq & Others, unreported 29 August 2000*** a number of Irish Travellers claimed that they had been refused service in five public houses in northwest

London. The court had to consider whether this constituted discrimination on the grounds of ethnic origin for the purposes of the Race Relations Act. The court spent six days deciding whether Travellers constituted a separate ethnic group for the purposes of the 1976 Act.

The court held that the Travellers met the two essential conditions set out in the *Mandla*.

Travellers possessed a long shared history which distinguished them from other groups (the court held that a history that could be traced back to at least the middle of the 19th century was sufficient to fulfil the *Mandla* test); and Travellers have a distinct cultural tradition of their own.

On the question of a distinct cultural tradition, Judge Goldstein said the court had not had much difficulty. They found that Travellers were plainly nomadic, even if some of them were now “settled”. They preferred to be self-employed and had certain traditional occupations. Some of them still practised match-making and they tended to marry within their own community. They had certain taboos about pollution and, though overwhelmingly Catholic, they had a particular attachment to pilgrimages and rituals.

The court summed up its findings:

“Our conclusions therefore are that of the two essential characteristics, namely the long shared history and the cultural tradition, we are satisfied that both these criteria have been sufficiently satisfied. Of the others – the common geographical origin or descent from a small number of ancestors – clearly that is satisfied, they all come originally from Ireland. The common language we have dealt with, the literature we have dealt with and the religious and minority aspects we have dealt with. It follows therefore, that our conclusions clearly are that we are satisfied that the *Mandla* criteria are satisfied in this case, and therefore Irish Travellers may be properly identified as an ethnic minority, so we answer the preliminary question in the affirmative”.

The Joint Committee also notes that in Northern Ireland, Travellers are recognised as a distinct racial group by specific legislation.

Article 5(2)(a) of the *Race Relations (Northern Ireland) Order 1997* says: “In this Order, “racial grounds” ... includes the grounds of belonging to the Irish Traveller community, that is to say the community of people

commonly so called who are identified (both by themselves and by others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland...”

Article 5(3) of the same order states that:

“In this Order „racial group” ... includes the Irish Traveller community.”

The Joint Committee acknowledges that the case for Traveller ethnicity has been accepted internationally, in the UK courts and in the other legal jurisdiction on this island. There is no cogent case based on legal, sociological or anthropological grounds put forward against Traveller ethnicity by this State.

### **Academic reasons**

The Joint Committee notes and accepts the comprehensive rebuttal of this potential excuse or concern by the Equality Authority in their 2006 report: *Traveller Ethnicity* and reiterated by Laurence Bond when he gave evidence to the Joint Committee.

The overwhelming thrust of academic research on Travellers over recent decades would support the case for the recognition of Traveller ethnicity.

### **The need for full consensus amongst Travellers**

The Joint Committee strongly rejects any suggestion that the recognition of Traveller ethnicity is contingent on the universal consensus of all members of the travelling community.

We agree with the assessment given to the Joint Committee by Sinéad Lucey from the IHCR, “*the principle of self-identification as protected under the International Convention on the Elimination of all Forms of Racial Discrimination, CERD, and indeed similarly enshrined in the framework convention, was being misunderstood by the State and that a universal form of self-identification as an ethnic group is not a necessary prerequisite for recognition of an ethnic minority by the State for the purpose of ensuring legal protection of that group.*”

*We pointed out that the Human Rights Committee is clear that the existence of an ethnic minority in a State requires to be established by objective criteria. This is nothing to do with opinion or consensus.”*

As it happens, the overwhelming majority of the travelling community clearly support the recognition of Traveller ethnicity as evidenced by the comments of Martin Collins, a Director of Pavee Point, to the Committee: *“While recognising that there are a number of individuals who disagree with the recognition of Traveller ethnicity, the four national Traveller organisations - the Irish Traveller Movement, the National Traveller Women’s Forum, Pavee Point Travellers’ Centre, and Mincéirs Whiden, a Traveller-only forum - all agree that Travellers do constitute an ethnic minority and should be recognised as such.*

*Last September, at a conference organised in Dublin Castle by the National Traveller Monitoring Advisory Committee, NTMAC, 99% of the Travellers in attendance also agreed that we do constitute an ethnic minority and should be granted that status. There was one dissenting individual”.*

Therefore all identifiable potential excuses or concerns that could be deployed by this State to justify the continued denial of Traveller ethnicity are rejected by the Joint Committee and hence our recommendations.

## CONCLUSION

In a compelling testimony to the Joint Committee, Brigid Quilligan, Director of the Irish Travellers Movement stated:

*“Through generations, where we were once a strong, proud people - and for some part still are - we have been devalued within society. Never before in my lifetime have I seen such hate as I have seen in the past five years. If one opens a newspaper or turns on the television, if one is in a shop or on a train, if one looks at Facebook, Twitter, thejournal.ie or anything at all, anti-Traveller sentiment is fired at one. As Travellers, we experience this in our daily lives and we try to set about changing that by making people aware of us and by working in partnership with people.”*

Although the policy of this State towards our travelling community has come a long way since the dark days of the Commission of Itinerancy, much work remains to be done.

The progress made, particularly under the Task Force on the Travelling Community in the 1990s has been undermined by the failures in policy implementation and the recent years of cutbacks as well as the ethnicity denial.

The formal recognition by this State of Traveller ethnicity will not be a magic wand or formula that on its own can address all of those challenges. But it will be a major step in the right direction and a permanent and positive realignment of the relationship between the settled community and the Traveller community in Ireland.

We conclude with the words of Brigid Quilligan.

*“We are not speaking about major changes; we are speaking about people who have been on the island of Ireland for as long as anybody can record and recognition for the valuable contribution we have made to Irish society. We are talking about having our own history recorded, rather than a history that has been written for us, imposed upon us and dictated to us. We are talking about setting the record straight and supporting our people to stand tall and feel they are a valuable part of Irish society.”*



## APPENDIX 1

### BIBLIOGRAPHY AND PUBLICATIONS OF INTEREST

- The Report of the Commission on Intinerancy (1963)
- The Irish Human Rights Commission (IHRC) discussion paper (2004) on Traveller ethnicity: *Travellers as an ethnic minority under the Convention on the Elimination of Racial Discrimination: A Discussion Paper*  
[http://www.ihrc.ie/download/pdf/travellers\\_discussion\\_paper2004.pdf](http://www.ihrc.ie/download/pdf/travellers_discussion_paper2004.pdf)
- The Equality Authority research report (2006) on Traveller ethnicity entitled: *Traveller Ethnicity: An Equality Authority Report*  
<http://www.equality.ie/Files/Traveller-Ethnicity-DOC.doc>
- *Traveller ethnicity in other jurisdictions*. Research Paper by the Oireachtas Library and Research Service for Deputy Pádraig Mac Lochlainn (Committee Rapporteur), August 2012
- The IHRC submission (2013) to government on Traveller ethnicity; *Submission on the Recognition of the Traveller Community as an Ethnic Minority in the State*  
[http://www.ihrc.ie/download/pdf/traveller\\_ethnicity\\_recognition\\_january\\_2012.pdf](http://www.ihrc.ie/download/pdf/traveller_ethnicity_recognition_january_2012.pdf)
- The Irish Travellers Movement submission (2013) to the Joint Oireachtas Committee on Justice, Defence and Equality on the *Recognition of Traveller Ethnicity*  
[http://itmtrav.ie/uploads/publication/ITM\\_Submission\\_to\\_the\\_Joint\\_Oireachtas\\_Committee\\_on\\_Recognition\\_of\\_Traveller\\_Ethnicity.pdf](http://itmtrav.ie/uploads/publication/ITM_Submission_to_the_Joint_Oireachtas_Committee_on_Recognition_of_Traveller_Ethnicity.pdf)
- Report of The Traveller People Review Body (1983)  
<http://www.lenus.ie/hse/handle/10147/46682>

- Report of the Task Force on the Travelling Community (1995)  
<http://www.lenus.ie/hse/bitstream/10147/45449/1/7868.pdf>
- Report of the High Level Group on Traveller Issues (2006)  
<http://www.justice.ie/en/JELR/HLGReport.pdf/Files/HLGReport.pdf>
- Review of the Commission on Itinerancy Report- Irish Travellers Movement (2013)  
[http://itmtrav.ie/uploads/publication/ITM\\_Review\\_of\\_the\\_1963\\_Commission\\_on\\_Itinerancy.pdf](http://itmtrav.ie/uploads/publication/ITM_Review_of_the_1963_Commission_on_Itinerancy.pdf)

## APPENDIX 2

### MEMBERSHIP OF THE COMMITTEE

David Stanton TD (Chairman)  
Pádraig Mac Lochlainn TD (Rapporteur)  
Niall Collins TD  
Marcella Corcoran Kennedy TD  
Alan Farrell TD  
Anne Ferris TD (*Vice-Chairman*)  
Seán Kenny TD  
Finian McGrath TD  
John Paul Phelan TD

Senators:

Ivana Bacik  
Martin Conway  
Tony Mulcahy  
Rónán Mullen  
Denis O'Donovan  
Katherine Zappone

## APPENDIX 3

### ORDERS OF REFERENCE

#### **a. Functions of the Committee – derived from Standing Orders [DSO 82A; SSO 70A]**

- (1) The Select Committee shall consider and report to the Dáil on—
  - (a) such aspects of the expenditure, administration and policy of the relevant Government Department or Departments and associated public bodies as the Committee may select, and
  - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee for the purposes of the functions set out below, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—
  - (a) Bills,
  - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 164,
  - (c) Estimates for Public Services, and
  - (d) other matters as shall be referred to the Select Committee by the Dáil, and
  - (e) Annual Output Statements, and
  - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies, and report thereon to both Houses of the Oireachtas:
  - (a) matters of policy for which the Minister is officially responsible,
  - (b) public affairs administered by the Department,
  - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
  - (d) Government policy in respect of bodies under the aegis of the Department,
  - (e) policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
  - (f) the general scheme or draft heads of any Bill published by the Minister,
  - (g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,

- (h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
  - (i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in paragraph (4)(d) and (e) and the overall operational results, statements of strategy and corporate plans of such bodies, and
  - (j) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,
  - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
  - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
  - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- \*(6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees:
- (a) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and
  - (b) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.
- (7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any sub-Committee or Committees standing established in respect of the Select Committee.
- (8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
  - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
  - (c) at the invitation of the Committee, other Members of the European Parliament.

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\* By Order of the Dáil of 8<sup>th</sup> June 2011, paragraph (6) does not apply to the Committee on Justice, Defence and Equality.

**b. Scope and Context of Activities of Committees (as derived from Standing Orders [DSO 82; SSO 70])**

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 26. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.
- (4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Dáil Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
  - (a) a member of the Government or a Minister of State, or
  - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.

## **APPENDIX 4**

### **TRANSCRIPTS OF COMMITTEE HEARINGS**

Wednesday 17<sup>th</sup> April 2013

Wednesday 12<sup>th</sup> June 2013

Wednesday 13<sup>th</sup> November 2013

# DÁIL ÉIREANN

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**AN COMHCHOISTE UM DHLÍ AGUS CEART, COSAINT AGUS COMHIONANNAS**

**JOINT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY**

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*Dé Céadaoin, 17 Aibreán 2013*

*Wednesday, 17 April 2013*

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The Joint Committee met at 2 p.m.

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MEMBERS PRESENT:

Deputy Marcella Corcoran Kennedy,	Senator Ivana Bacik,
Deputy Anne Ferris,	Senator Martin Conway,
Deputy Seán Kenny,	Senator Denis O'Donovan,
Deputy Pádraig Mac Lochlainn,	Senator Katherine Zappone.
Deputy Finian McGrath,	
Deputy John Paul Phelan,	

In attendance: Deputy Áodhán Ó Ríordáin and Senator Fiach Mac Conghail.

DEPUTY DAVID STANTON IN THE CHAIR.



**Recognition of Traveller Ethnicity: Discussion**

**Chairman:** I welcome Ms Brigid Quilligan, director of the Irish Traveller Movement, and thank her for coming before the joint committee. I also welcome from the Irish Traveller Movement Ms Susan Fay, managing solicitor, and Ms Jacinta Brack, communications co-ordinator. I also welcome Ms Ronnie Fay and Mr. Martin Collins, directors of the Pavee Point Travellers Centre. We will ask them to make brief opening remarks for approximately five minutes, after which we will have a question and answer session on the issues raised.

By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the joint committee. If they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against a person or persons or an entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the salient rulings of the Chair that they should not comment on, criticise or make charges against a person outside the Houses or an official by name or in such a way as to make him or her identifiable.

I ask everybody to please switch off all mobile phones. It is not good enough to leave them in silent mode because they interfere with the recording system. I even take the battery out of mine to ensure it is completely switched off.

I invite Ms Quilligan to make her opening statement.

**Ms Brigid Quilligan:** We are delighted to be here to speak about why it is imperative for our people to have their ethnicity recognised by the State. The Irish Traveller Movement has more than 40 member organisations and a mandate to speak on their behalf and advocate for the recognition of Traveller ethnicity. Our submission includes details of Irish Travellers who number 40,000 in Ireland, 15,000 in Britain and 10,000 of Irish descent in the United States. We have a shared history, cultural values, a language, customs and traditions which are recognisable and distinct to our own people. We constitute an ethnic group on the basis of these distinct and separate cultural values and traditions which make us self-identify as a separate group and enable us to be identified by the majority of the Irish population as a separate group. We have been recognised as an ethnic group by all major international human rights instruments and bodies in Europe and worldwide and by the major human rights instruments in Ireland. Uniquely, we also have two distinct features which mark our difference. We have a dual identity of being indigenous Irish and Travellers and an undisputed and historical experience of marginalisation and discrimination in the country to which we belong.

Members will note from our submission that our legal argument is watertight. There is no dispute among national and international legal experts that we constitute an ethnic group. We self-identify as an ethnic group and others recognise us such. I will speak about the impact of not being recognised in one's own country as an ethnic group. No matter how many boxes we tick or how much we fulfil our requirements and responsibilities in Irish society, we still experience discrimination and prejudice in every area of life on a daily basis. People justify racism against us by stating we bring it on ourselves. That is what the general Irish population thinks about us and we know this. We feel the hate, as do our children. We see the hate in the media and displayed by people in positions of responsibility, politicians, judges, the police, teachers

and doctors. We feel, see and experience it on a daily basis. It is not good enough for the State not to offer us the protection to which we are entitled.

We are not speaking about major changes; we are speaking about people who have been on the island of Ireland for as long as anybody can record and recognition for the valuable contribution we have made to Irish society. We are talking about having our own history recorded, rather than a history that has been written for us, imposed upon us and dictated to us. We are talking about setting the record straight and supporting our people to stand tall and feel they are a valuable part of Irish society. Make no bones about it - despite what one might hear regularly, Travellers want to be part of Irish society. We work hard and tirelessly to be part of society. Unfortunately, however, doors are often closed in our faces, so many of our community do not engage. Working with the Irish Traveller Movement, I can see how people - especially the most vulnerable in society who are dependent on the State - are treated by agents of the State. I can therefore understand why people choose not to engage. However, our message today is that both local and national Traveller organisations want to support people to engage with the State.

We want recognition so that our culture and people can survive into the future. We cannot do it on our own, however, so we need your support. We need allies and while we have some already, we need more allies in the Oireachtas. We need people to stand up for us. We are on this side of the table while the committee members are on the other side.

There is a lot we could say about ethnicity and I could talk all day about it, including key points as to why the recognition of our people is so vital for our survival. Our suicide rate is six times the national average. My colleagues and those in the Visitors Gallery know that it is directly related to the oppression and marginalisation our people suffer.

During questions and answers I hope to have an opportunity to elaborate further. I thank the committee for its attention.

**Chairman:** I thank Ms Quilligan for her powerful presentation. Mr. Collins wants to come in next.

**Mr. Martin Collins:** I thank the Chairman and other committee members for giving Pavee Point Travellers' Centre this opportunity to present some of the key arguments as to why Travellers should be recognised as an ethnic minority. The Tánaiste is on record as having said that same-sex marriage is the human rights issue of our generation and I would agree with that. I would also suggest, however, that for the Traveller community, the recognition of Traveller ethnicity is the human rights issue of our generation.

We are disappointed at the persistent refusal of successive Governments to recognise what is self evident, namely, that we Travellers constitute a distinct ethnic group. The Government has continued to ignore the opinions and recommendations of a range of eminent domestic and international bodies which have all said the Government should take concrete measures to recognise Traveller ethnicity. The same eminent human rights bodies have also said, very clearly, that Travellers meet all the legal and academic criteria in terms of what constitutes ethnicity.

In particular, I want to draw the attention of the committee to general recommendation No. 8 of the Committee on the Elimination of Racial Discrimination, CERD, which is the principle of the right to self identify, if no objective justification can be put to the contrary. The Irish Government is immediately in breach of this principle because it has not explained or justified why it will not recognise Traveller ethnicity. The mantra we consistently get is that there is a

divergence of views within the Traveller community.

While recognising that there are a number of individuals who disagree with the recognition of Traveller ethnicity, the four national Traveller organisations - the Irish Traveller Movement, the National Traveller Women's Forum, Pavee Point Travellers' Centre, and Mincéirs Whiden, a Traveller-only forum - all agree that Travellers do constitute an ethnic minority and should be recognised as such.

Last September, at a conference organised in Dublin Castle by the National Traveller Monitoring Advisory Committee, NTMAC, 99% of the Travellers in attendance also agreed that we do constitute an ethnic minority and should be granted that status. There was one dissenting individual.

Nowhere in international law does it suggest that a consensus is needed for the recognition of ethnicity to be granted to our people. In the final analysis, it is irrelevant whether one agrees or disagrees. It is about recognising that there are international objective criteria on what constitutes ethnicity. It is against this that assessments and decisions ought to be made. If this approach was adopted by the Government there is no doubt in my view that our ethnicity would be recognised.

The 1976 *Mandla v. Dowell-Lee* judgment in the UK is of significant importance to Irish Travellers. It gave a lengthy definition of an ethnic group. I want to convey two essential elements to this committee. One is that the group has a long shared history, of which it is conscious, distinguishing it from other groups and the memory of which is kept alive. The second element is a cultural tradition of its own, including family, social customs and manners, often but not necessarily associated with religious observance.

In 2002, this criterion was heavily relied on in the English courts in *O'Leary and Others v. Allied Domecq and Others*. After long deliberation, the presiding judge, Mr. Justice Goldstein, concluded that Irish Travellers met this criterion and therefore should be recognised as an ethnic minority. In addition, the 1997 Race Relations Order grants recognition to Travellers in the North of Ireland, yet in this jurisdiction we do not.

In that context, we also suggest that the Irish Government is in breach of the Good Friday Agreement which refers to an equivalence of rights. In other words, it is about harmonising legislation upwards. If there is a piece of legislation in the North of Ireland which is inferior to our legislation, there is an obligation on the Northern Ireland authorities to enhance their legislation upwards. Likewise, there is a corresponding obligation on the Irish Government to enhance our legislation. Unfortunately, however, it has not done so.

Our own Equal Status Act gives a very good definition of what constitutes ethnicity in all but name. Traveller organisations have provided evidence, both legal and academic, which clearly suggests that Travellers constitute an ethnic group. Therefore, under international law the burden of proof to the contrary now lies with the State, but it has failed to act. As I said, the mantra we get all the time is that there is a divergence of views in the Traveller community.

This is not some sort of academic or ideological debate. Not to recognise Traveller ethnicity has profound implications in terms of legal protection. It is questionable whether Travellers are afforded the full protection of the EU race directive. There are also implications concerning support for Traveller nomadism, language, culture, history and the inclusion of Travellers in intercultural and anti-racism initiatives.

As regards the ethnic question in our national census, we had to fight tooth and nail to get Travellers included in that because we were not recognised as an ethnic group. In the end, we reached a compromise. As well as practical implications, ethnicity also has a symbolic value. It would be good for Travellers' self-esteem and confidence, as well as being important for our people's overall status in Irish society.

In our opinion, there needs to be an unequivocal recognition of our ethnicity either by way of legislation or constitutionally, or both. In the absence of this unequivocal recognition, the subtext is that we are a dysfunctional, primitive community who need to be civilised and rehabilitated.

Ethnicity is fundamentally about recognition, respect and, by extension, inclusion. It is about recognising our history, culture and language. Let us be clear about it - this is not about saying that the more one claims ethnicity, the less one claims Irishness. We are very proud of our ethnicity and we are also very proud of our Irishness. We are willing, and demanding, to play our part in the Irish nation.

**Chairman:** I thank Mr. Collins for his powerful presentation. The committee has agreed to have these hearings today and will probably have others. We have invited Deputy Mac Lochlainn to act as rapporteur and prepare a report for the committee, which we will discuss when we have finished this work. We will be presenting that to the Government, as well as publishing it. I wanted to clarify where we currently are and I think I speak for everybody in saying that. Deputy McGrath was the first member I saw indicating a wish to ask one or two questions. Members will ask a question and then get an answer and so on. The witnesses will be glad to hear members do not make speeches but ask questions.

**Deputy Finian McGrath:** Ms Quilligan, Mr. Collins and the entire delegation are welcome before the Oireachtas Joint Committee on Justice, Defence and Equality. I am an Independent Deputy and on the broader issues, I endorse fully what the witnesses have said. Their submissions were excellent and right to the point. My first question pertains to a single sentence that jumped out at me, namely, Ms Quilligan's comment that Travellers feel the hate. I believe that was the phrase she used. I ask her to expand a little on this because many people in Leinster House and in the broader community do not get that and do not understand the impact it has on adults, as Ms Quilligan mentioned, but also on young Traveller children. That is my first question.

**Chairman:** Could we possibly focus on the ethnicity question, which is the core of the joint committee's business? We should keep that in mind when debating this point because that is at the core of the work we are doing today.

**Ms Brigid Quilligan:** In response to Deputy McGrath, the reason ethnicity is an issue so dear to my heart is that I think some of the hate we experience as adults and children - I will speak about that in a second - is because we are seen, as Mr. Martin Collins said, as deviants and as villains, as a kind of a subculture and as people who do not conform and will not participate in society. Through generations, where we were once a strong, proud people - and for some part still are - we have been devalued within society. Never before in my lifetime have I seen such hate as I have seen in the past five years. If one opens a newspaper or turns on the television, if one is in a shop or on a train, if one looks at Facebook, Twitter, thejournal.ie or anything at all, anti-Traveller sentiment is fired at one. As Travellers, we experience this in our daily lives and we try to set about changing that by making people aware of us and by working in partnership with people. However, while we accept there is a certain tolerance from the

people on the street, where it is happening more often is with people in positions of power who are coming out with absolutely outrageous anti-Traveller propaganda in the media in public open forums. It is open season on Travellers, with little or no consequences for their actions. When one is a Traveller, whether one is in the line of work we do or is a doctor, a hairdresser or anything else, be it getting involved or being a mother staying at home with one's children, when one sees such things in the media, one asks whether there is no law in the land of Ireland for one's people. We ask if there no justice for our people if so much hate can be expressed towards us. Like anyone, we internalise things. If one is constantly told and fed negative things about one's self, one internalises them. Certainly, we see some of our young people struggling with their identity and it is very hard, as a parent, to try to instil pride in one's identity because of all the hate one encounters. I do not know whether anyone else wishes to add to this point.

**Ms Ronnie Fay:** May I make a point pertaining to ethnicity? One problem with the denial of Traveller ethnicity is that Travellers are not automatically included in anti-racism and inter-cultural initiatives, many of which are about promoting integration and mutual respect in Ireland. Because this ethnicity is not recognised, the units in those Departments that are dealing with anti-racism and inter-culturalism actually do not include Travellers. Consequently, Travellers have a unique experience of discrimination and we do not call it racism. This, for us, is a key and core part of the debate regarding ethnicity, because if one recognises Traveller ethnicity, one recognises that racism is the root cause of discrimination with which Travellers are faced. If one does that, one then seeks to address and challenge it in order that adults and children are not exposed to hate, racism and discrimination. This is a fundamental problem. The unit in the Department of Justice and Equality that deals with anti-racism and promotes inter-culturalism excludes Travellers. Travellers are dealt with by the Traveller division, and this is hugely problematic. For example, while the Government was developing the inter-cultural education policy, Travellers were excluded until we were obliged to bang down the door and demand to be included. Moreover, we then are perceived to be difficult, awkward and always complaining, whereas, were we to be included as a right, our input would be planned. As Mr. Martin Collins noted, we have campaigned for an ethnic question in the census since 1986. We finally succeeded in getting one in the early 1990s and it was only a Traveller question. When the ethnic question was introduced in 2002, Travellers were going to be excluded from it because they were not recognised as an ethnic group. That is the reason the question in the census is what is one's ethnic and cultural background. Really, however, the issue needs to be that ethnicity is recognised, that racism is named and that Travellers are included in anti-racism and inter-cultural initiatives.

**Deputy Finian McGrath:** My second question is related, to an extent, and is specifically to do with the ethnic group aspect. In her submission, Ms Quilligan stated that the 40,000 Travellers in Ireland are recognised by many human rights groups, both nationally and internationally, as an ethnic group. She then made a comment about the argument from a legal perspective and stated it was recognised as being, and I believe she used the word, "watertight". Do the witnesses have information about the view of the present Attorney General? Has the Irish Travellers Movement ever been given a view from the Attorney General in with regard to that aspect of the issue?

**Ms Susan Fay:** I am not in a position to comment on the view of the Attorney General. However, I can state that both the Equality Authority, in a report from 2006 on Traveller ethnicity, and the Irish Human Rights Commission in 2004 and 2013 agreed that Travellers should be recognised as an ethnic group. Both of these statutory human rights and equality organisations agreed. Picking up on a concern raised by Ms Ronnie Fay, the new Irish Human Rights

and Equality Commission, IHREC, that is being formed, with which I am sure all members are familiar, has an inter-culturalism remit. However, because Travellers are not specifically named as an ethnic group, it is unclear whether Travellers will be included within that remit. Consequently, there is less legal clarity, more confusion and more lobbying to be included in provisions and rights that justifiably should be afforded to Travellers. I hope this has dealt with Deputy McGrath's question.

**Deputy Finian McGrath:** I just get the impression that there are people within the legal establishment or within the State who are blocking the recognition. To zoom in on the highly relevant point made by Mr. Martin Collins when he spoke of the Good Friday Agreement, if legislation both North and South is being brought into line and if we are really serious about equality and human rights, my personal view is to question the reason we are not getting on with it and to ask what is the problem in this regard.

**Chairman:** When we eventually come up with our report, we might be able to take those points into account. Has Deputy McGrath concluded his questions?

**Deputy Finian McGrath:** I will put just two more questions because I do not wish to hog the time. First, are there examples internationally of good practice in respect of Travellers, gypsies or different minority groups? Are there international examples of where it works in the context of human rights and recognition? Mr. Collins might answer my final question, which pertains to the burning out of a house allocated to a Traveller family in County Donegal. At the time of that horrific incident, only a minority of Deputies in Dáil Éireann spoke out, and personally I felt very let down. How did Mr. Collins react to that? Violence against Travellers is happening frequently-----

**Chairman:** I know.

**Deputy Finian McGrath:** -----and there is a deafening silence from Members of the Oireachtas that is unacceptable.

**Chairman:** Sure. I wish to keep the debate to the question of ethnicity, if possible. That is the subject on which everyone wishes to focus. Let us not stray too far from it. As briefly as possible, who wishes to come back on that point?

**Ms Brigid Quilligan:** If I respond on the question of indigenous people, Mr. Collins might answer about Ballyshannon. As for other examples internationally, we have the example of the Sami people in Scandinavia, whose ethnicity was denied for many years. In our consultation with members of the Sami people, the similarities between us were absolutely uncanny. One of the main things from which they feel they have benefited since they were recognised in, I think, the late 1970s is the increase in self-esteem and pride among their own people, as well as preservation of their own culture and identity and the value that has been placed on them within their own country. However, one does not need to look too far. We mention Northern Ireland and how, if one is in Dundalk and crosses the Border, one has more rights in Newry as an Irish Traveller than one has in Dundalk at present.

**Deputy Finian McGrath:** But is it working in the North on a practical level? I wonder at times.

**Ms Brigid Quilligan:** It is. We do not think this will be a cure for all ailments. We know this will be a long-term thing. However, Travellers in Northern Ireland are included in all integration policies but, as Ms Fay pointed out, we are not included here. We have to lobby to be

included in everything else.

**Chairman:** That is what we are here today to do.

**Ms Brigid Quilligan:** Thank you, Chairman.

**Chairman:** That is why we are having these hearings. Ethnicity is the issue and I want to keep it to that if possible.

**Mr. Martin Collins:** I will respond briefly to Deputy Finian McGrath's question about political leadership. The reaction to the burning of a house allocated to a Traveller family in Donegal was disappointing. There was a lack of courage and political leadership from most people, with a few exceptions, including Deputy Finian McGrath and Deputy Pringle. In the absence of that, the signal being given is that it is open season on Travellers and one can attack Travellers with impunity. This does not befit a western, civilised democracy. The rule of law is being completely ignored. I hope the culprits who were responsible will be brought to justice. In fact, it is reported by the Garda this morning that after 61 days the incident has been found to be criminal damage and arson. It was not an accident.

With regard to good practice, in Romania the Roma are recognised as a distinct ethnic minority. That is reflected in its constitution. In Romania there is a model of good practice in political leadership. Its national parliament has an affirmative action programme in which Roma are represented in the political system. That is a model of good practice and is something that potentially could and should be replicated in the Irish context. I agree with Brigid that recognising Traveller ethnicity is not a panacea or a cure-for-all, but it is a step in the right direction. If that is the starting point, it must be supported by appropriate legislation and resources. I can give an example. I was in primary education for six years. Unfortunately, I did not get the opportunity to get a secondary education. In those six years I was in an exclusively settled environment and I was taught about settled history, settled people's culture and so forth. That is quite valuable, but at no stage in those six years was my identity as a Traveller in Ireland affirmed and celebrated. I am not a human rights lawyer but I suspect that if Traveller ethnicity was granted, under international law there would be an obligation on the State to ensure that our curriculum is inter-cultural and reflects diversity. It would be different from what it is now, which is basically a monocultural system.

**Senator Katherine Zappone:** I welcome the witnesses and thank them for their very persuasive and powerful presentations. I welcome the other Travellers in the gallery.

I favour the recognition of Travellers as an ethnic group for all the reasons the witnesses have identified, particularly the strength of the argument that there are international objective criteria which should be used to acknowledge ethnicity as well as the principle of the right to self-identity. What do the witnesses believe are the reasons for the State's resistance to this? Is there a paper or body of evidence that the State has produced to argue against the recognition of ethnicity? Does it have anything to do with some of the policy or, perhaps, service implications of Travellers being recognised as having a distinct ethnic identity?

**Mr. Martin Collins:** None of the Traveller organisations has received any documentation or heard orally any cogent, logical reason that Travellers should not be recognised as an ethnic minority. We ask the Government to produce its evidence or rationale for not recognising Travellers as an ethnic minority. I agree with Deputy Finian McGrath's suggestion. At some stage it would be appropriate and productive if the Attorney General could be invited to appear

before this committee and account for why Travellers are not recognised as an ethnic minority. I hope the committee will do that.

**Senator Martin Conway:** The witnesses are very welcome. Ms Brigid Quilligan gave a fantastic presentation. I believe it will be a defining moment in terms of what this State can and should do to right the absolute wrongs that exist in this society against members of the Traveller community. Am I correct in suggesting that, from the witnesses' perspective, this will be the test of whether politics cares about or respects the Traveller community and whether politics works for the Traveller community? Is this such an important issue for the witnesses that it will define their relationship with politics and with the State?

**Ms Brigid Quilligan:** Absolutely. This is the core issue of our time, as the Senator said. It means building a good foundation for everything else. We have everything else in place but if people are not recognised as the indigenous minority and ethnic group they are, everything else is like a house of cards. It just falls. We need political leadership and allies. We need somebody to step up and support us to further our human rights within Ireland and to take our rightful place in Ireland. As Mr. Collins said, we are a people who are seen as outcasts, deviants and undesirable. Regardless of how hard we work in Ireland, this is still the opinion. We need people at political level to show leadership and lead the way with us. We are absolutely willing to work alongside them to achieve this. This is the issue of our time.

**Senator Martin Conway:** I fully support the recognition of Travellers as an ethnic minority. I sincerely hope the deliberations here will result in the committee's recommending that to the Government. I will certainly do my part to ensure that happens.

**Chairman:** We will have to wait for Deputy Mac Lochlainn's proposal on that.

**Deputy Pádraig Mac Lochlainn:** My views on this subject are well known. I commend the witnesses on their presentation. The human rights and legal framework for this, domestically and internationally, is watertight. It cannot be argued with. It is that simple. I invite anybody to argue the case against it, as there is no case against it. We will develop that as the hearings proceed. We will see if it can be argued against, but that is my analysis at this point. However, there is a far more important question than my analysis. The transcript of these proceedings will be produced and perhaps could be circulated to a wider audience, particularly the Minister for Justice and Equality. Will the witnesses take us through the history of the Traveller people? What is their history over hundreds of years of nomadism? I have read a number of books in the recent past but we have not yet had this conversation. It might be helpful if the witnesses would discuss the history of the Traveller people, how they are connected to this island over hundreds of years, their nomadism and how it evolved and how we as a people evolved into an urbanised, settled people, because we all emanated from the same place originally.

**Ms Brigid Quilligan:** We are a group that is indigenous to Ireland. We believe there is a record of Irish Travellers in the island of Ireland as far back as the fifth century. There is a fallacy that we were a by-product of the Famine, but we strongly dispute this. We know, for example, that Travellers emigrated to Murphy Village in America prior to the Famine. I did not bring them with me but there are different references to Travellers throughout the past. We are a nomadic people, mainly working in tin smithing and known as tinkers. Some of us are musicians, bards and storytellers. There are people in the gallery who are far more experienced at telling our history than I am, so I apologise to those people. I do not know if the Chairman wishes to invite them to speak.



**Chairman:** I am sorry, but we cannot invite people from the public gallery to speak, unfortunately.

**Ms Brigid Quilligan:** Perhaps we could make a submission.

**Chairman:** This is an extraordinarily interesting question and it will take time to address it. We may invite the ITM to make a written submission to the committee on it. It is both interesting and important, but we cannot give it the time it deserves. Perhaps we might revisit it because it is central to what we are doing.

**Deputy Pádraig Mac Lochlainn:** We might let Mr. Collins and Ms Quilligan give a brief summary and then, with the Chairman's agreement, we might revisit the issue in a future presentation.

**Deputy Finian McGrath:** It would be great to receive an oral presentation rather than a written submission at some stage.

**Chairman:** My concern is that we will not be able to do it justice now in the time available. I would like to give people an opportunity to think about it, prepare and make a presentation at a later date.

**Senator Martin Conway:** I support the Chairman's proposal.

**Chairman:** The delegates can nominate somebody to make a presentation if they believe there are people who are more qualified and experienced to enlighten us because it is interesting.

**Deputy Pádraig Mac Lochlainn:** We might let Mr. Collins and Ms Quilligan make an assessment before we revisit it at a later date.

**Ms Brigid Quilligan:** Our history is that we are a nomadic people who roamed the land and made a good living from tinsmithing, horse dealing, labouring and music. Our recollection is that settlement was imposed on us rather than being something we wanted. I deferred to one of our members in the Visitors Gallery because of one of our cultural norms, which is to defer to older people who have more experience. I take on board the Chairman's suggestion to come back and outline the detail involved, but in the assimilation policies from the 1960s onwards something got lost along the way and we began to be seen as the Traveller problem. Once anything is approached as a problem, that is how one will respond to it. I am sorry I cut Mr. Collins off.

**Mr. Martin Collins:** As Ms Quilligan alluded to, our people have been here since the 5th century. There are sporadic references in some historical texts which suggest our people date back that far. The reason the references are sporadic is history is always written by the victors, the powerful, the privileged and the elite; therefore, minorities and women, in this case, were largely excluded from the texts. Their contribution to the evolution of the State has been largely overlooked. We have been on the island since the 5th century and, in that context, are an integral part of it. Travellers and settled people have a shared history. As Travellers, we also, unfortunately, have a discrete history of oppression and persecution. In some cases - I do not mean to be emotive - there was attempted genocide or ethnic cleansing to rid society of Travellers through assimilationist policies.

We need to be careful in looking at Travellers through a cultural lens because we can end

up pigeon-holing people. That is why, in terms of a legal framework, we would be better off considering this issue from an ethnicity point of view because ethnicity recognises a distinguishable group, but, within it, it allows people to be individuals also. In other words, not every Traveller is in favour of having large elaborate headstones when a loved one dies. Some Travellers like it and are quite flamboyant and extravagant, while others are more modest. Likewise, some celebrations of christenings and weddings are flamboyant and extravagant, while others are not. Similarly, some Travellers value nomadism, while others do not. Some Travellers see language as valuable, while others do not. It the same for settled people when it comes to ethnicity. They do not all share the same cultural practices and do not have the same values and beliefs. That is why it is better to look at Travellers from an ethnicity point of view in terms of a legal framework rather than through a cultural lens.

**Deputy Pádraig Mac Lochlainn:** I am trying to get the representatives to outline what historically has distinguished the Traveller community from the settled community. How is it that there are 40,000 people in that culture today? What is the historical context? Various members of the community have different aims and outlooks. How did the community evolve?

**Mr. Martin Collins:** I hear what has been requested, but that is a chapter of our history that has yet to be written. The Deputy might recall a programme was made on researching Travellers' DNA. It concluded that more than 1,000 years ago there were the beginnings of a separation of the two communities. The information is quite sketchy, but it is a chapter that has yet to be written. I hope it will be researched and written.

**Senator Fiach Mac Conghail:** As I am not a member of the committee, I thank the Chairman for allowing me to contribute. I am present because I want to bear witness to the stories told. I support the Chairman's view because it is important to have all of this information on the record in order that historians and others can look back on them. It is embarrassing for somebody such as me to feel I have a right as an Oireachtas Member to somehow convey or transfer ethnicity to fellow citizens. I also acknowledge the artist and playwright, Rosie McDonagh, who is in the gallery, someone with whom I have worked, collaborated and fought on many occasions. I thank the representatives for their vivid, lucid and articulate presentations which have given me clarity. I have one question for Ms Quilligan which emanates from Mr. Collins's comments on the Good Friday Agreement and the disparity between the North and the South. They outlined a number of compelling stories, particularly in the context of the suicide rate. What are the practical differences between being a Traveller in the two jurisdictions? Are there headline issues that would help the committee to clarify what recognition of ethnicity would bring to the Traveller community in the South?

**Ms Brigid Quilligan:** Travellers have increased protection in the North and there are increased, targeted supports in place because they are named as members of an ethnic minority. For instance, integration policies, supports and affirmative actions to support people from an ethnic minority automatically include Travellers. In Ireland we have had to battle to be included in anything positive to do with equality. Initially, it was equality legislation, then broadcasting legislation and the press complaints procedures. We have had to lobby every step of the way to be included in legislation under which we should be automatically included.

**Senator Fiach Mac Conghail:** What was the issue with the Press Council of Ireland?

**Ms Ronnie Fay:** We lobbied for many years on the need for an independent press complaints authority and when it was finally introduced, the only ground excluded under the Equal Status Acts was the Traveller ground.

That was very telling for us and we do not believe it was an accident. It ran counter to the report prepared for the Department of Justice and Equality when it was making preparations for the establishment of the Press Council. The only ground excluded initially was the Traveller ground. This coincided with visits to Ireland by members of the advisory committee on the Framework Convention for the Protection of National Minorities and the European Commission Against Racism and Intolerance. We brought the matter to their attention and I subsequently brought it to the attention of the National Traveller Monitoring and Advisory Committee. We lobbied the Department of Justice and Equality and many Deputies on the issue and succeeded in having the decision rescinded and Travellers included in the scope of the Equal Status Act. For this reason, we take the view that just because we are not paranoid, that does not mean they are not out to get us. The case I cited was a clear example of the further exclusion of Travellers.

In terms of the media, these developments took place at the time of the Pádraig Nally case.

**Chairman:** Witnesses should not refer to people by name.

**Ms Ronnie Fay:** I will withdraw that example but there are many examples of Travellers being vilified in the media. Research done in 2000 showed that 90% of people would not want a Traveller as part of their family, yet some 80% of the respondents to the survey had never met a Traveller. When they were asked how they formed their view, the respondents indicated it was based on media reports. The media have a major responsibility in this regard. Unless Traveller ethnicity is recognised and Travellers are planned into matters by design, representatives of Travellers end up being viewed as difficult, in other words, those who come hammering on the door to make a case. We end up being perceived as highly adversarial, even though we work professionally, collaboratively and in a spirit of solidarity and partnership. We want to be included by design and recognised as equal but different. Difference must be factored into the planning.

**Ms Susan Fay:** To respond to the comment made by Senator Martin Conway, this is not only a question of respect for Travellers but of the State's respect for international human rights and the treaties it ratifies. We have been continually reminded that unfounded denials of Traveller ethnicity are not in compliance with the third Framework Convention for the Protection of National Minorities. As Mr. Collins pointed out, the burden of proof on the question of showing that Travellers are not an ethnic group rests firmly with the State. It has not been established that Travellers are not an ethnic group.

To respond to Deputy Finian McGrath's comments, the Irish Traveller Movement has contacted the Attorney General on the issue of ethnic recognition but has not yet received a definitive answer.

On international human rights legislation, which has been alluded to previously, when international conventions or covenants are being implemented in Irish law groups such as the Irish Traveller Movement, Pavee Point and the National Traveller Women's Forum must lobby to have Travellers included as they are not included as a matter of right. When the Equal Status and Incitement to Hatred Acts were initiated they did not include Travellers, nor were Travellers automatically included within the scope of the Press Council and lobbying was required to address the issue.

Some people assert that the protection afforded to Travellers under the Equal Status Act is sufficient. As my submission sets out, however, there is a lack of legal clarity in this regard. As Travellers are not recognised as an ethnic group, the question arises as to whether Travellers

can seek the application of the EU racial equality directive in national courts or seek to impugn the State in relation to the transposition of the directive. The lack of legal clarity on these issues is a serious matter. It is not a case of paranoia on our part because we have experienced this in the Irish Traveller Movement law centre. The fact that Travellers are not recognised as an ethnic group has been used against us in cases taken by the law centre. I am unable to give clients advice on the interpretation of whether the Equal Status Act transposes the racial equality directive because no one can give such advice. Ireland has a seat on the United Nations Human Rights Council but is refusing to recognise the country's indigenous ethnic group as a people in accordance with international human rights norms and anthropological and sociological norms and definitions. This is an uncomfortable position for the State to be in.

**Deputy Aodhán Ó Ríordáin:** I thank the Chairman for allowing me to contribute to the meeting given that I am not a member of the joint committee. I know the witnesses before the joint committee as I am a member of the education committee of Pavee Point. If that restricts me from making a statement or amounts to a conflict of interest, I ask the Chairman to alert me.

**Chairman:** The Deputy should ask a question.

**Deputy Aodhán Ó Ríordáin:** It is in the nature of Irish politics that it tends to represent the more powerful. If one considers the composition of the Dáil, it is 87% male, almost exclusively white, does not include anyone from a Traveller background, as far as we are aware, and has few Members from the lesbian, gay, bisexual and transsexual, LGBT, community. Unfortunately, therefore, when one seeks to run for election some people use hatred of minorities as a political platform. Given that minorities are powerless and do not have the same access to mainstream media as others or political power and people willing to advocate for them, the fear factor tends to win out. Unfortunately, the Traveller community has been on the receiving end of prejudice, including in some disgraceful recent cases. Individual councillors or Deputies who have made outrageous statements have never paid a political price for doing so.

Inequality is incredibly destructive. Discrimination and inequality impacts on the individual and his or her community and hangs over him or her for life. I am delighted we are having a positive discussion about a step the country and travelling community wish to take. A major healing process can take place between two groups that have probably never come to terms with each other. This is what is so engaging, attractive and positive about the discussion on ethnic status for Traveller people.

The international argument for ethnic status is undeniable. Do the witnesses agree that it would be a wonderful step for the Traveller community, one which would also bring responsibility, and something the settled community will also have to embrace and celebrate? Ethnic status must not be viewed as exclusively an issue for the Traveller community, as it is one for all of Irish society and one which everyone should feel part of and celebrate. In response to the decision made at the weekend on gay marriage, some people indicated their marriage will be slightly diminished if we extend marriage rights to other people. I ask the witnesses to nail the lie that ethnic status for Travellers will somehow diminish other people's sense of themselves or identity. On the contrary, it is a major cause for celebration. An argument based on the law of unintended consequences is always rolled out to oppose such steps.

**Mr. Martin Collins:** Choosing not to recognise Traveller ethnicity has cost implications. When one considers the context in which the Traveller community finds itself, educational outcomes for Travellers are much inferior to those of the settled community, few Travellers have an opportunity to go to post-primary education, never mind third level education, and the outcomes

of accommodation policy are despicable. The health inequalities between the two communities show that, on average, a Traveller man will live 15 years less than his settled counterpart and a Traveller woman will live 12 years less than her settled counterpart. The infant mortality rate among Travellers is almost four times the national average. Ms Quilligan referred to the suicide rate among Travellers, which is almost seven times higher than in the settled community. There is also a significant and growing drugs problem in the community and an alcohol problem. All of these issues are fundamentally tied up with the issue of identity and for these reasons, the issue of ethnic status has more than practical implications for us. It has symbolic meaning to us in terms of our self-esteem, self-worth, confidence and status in society overall. That is the point I was trying to make. It is not some sort of academic, ideological or philosophical debate but an issue with practical and symbolic implications. This is a core point and the reason ethnic status is the human rights issue for our generation, in the same way that same sex marriage will be the issue for many people, including Travellers. The starting point, in the context in which we find ourselves, is that choosing not to recognise Traveller ethnicity has cost implications.

I can only speculate as to whether the Government has done its own work and research which may show cost implications in recognising Traveller ethnicity. While that may be the case, investment and parity of esteem are needed in the long term.

There is a peculiar understanding about ethnicity in an Irish context in that we seem to attribute it to minority groups only. People tend to overlook that there are also majority ethnic groups. In the Irish context, settled people belong to a majority ethnic group. I am not suggesting that all the members present practise the same traditions or hold the same values but they all belong to one ethnic group. I am not suggesting that all settled people have the same traditions and values but they all belong to the same ethnic group. Settled people have no need to be conscious of that because they have developed an infrastructure which supports and validates their ethnicity. We do not have the same infrastructure. I would like Traveller history and identity to be reflected in our schools. I would like our history, our culture and our contribution to Irish society to be reflected in museums and heritage centres.

As already stated, we do not have the relevant infrastructure. We are continually conscious of that fact. Our ethnicity is, therefore, always under siege and being contested and questioned in a way that does not happen to other groups. That is the fundamental message we are trying to get across to members and I hope we will succeed in that regard. I have never had an opportunity to meet the Attorney General or to hear an explanation as to why the Government has refused to recognise Traveller ethnicity. I hope, therefore, the committee will at some point invite the Attorney General to appear before it in order that she might explain what is the objection-----

**Chairman:** We cannot do that but we can certainly discuss the matter with various Ministers.

**Mr. Martin Collins:** Perhaps the Minister for Justice and Equality, Deputy Shatter, could be invited to come before the committee.

**Chairman:** We may end up inviting him to come before us.

**Ms Brigid Quilligan:** With regard to Deputy Ó Ríordáin's question, our communities are already in conflict. We are of the view that focusing on ethnicity will commence a dialogue and foster an environment of respect and understanding. We believe that, in general, Irish people are good people. We are known throughout the world for being generous, good-hearted and welcoming. However, the question of Travellers relates to one of the last battles. Very good-

hearted and politically correct people still feel it is okay to openly discriminate against us, to make anti-Traveller comments and to use the “K” word in reference to us. I refer here to conversations which take place around the dinner table in good, respectable homes and in good, respectable offices. In these places, we continue to be discriminated against and spoken about as if we come from another world. Recognition of our ethnicity would be a start in the context of commencing a dialogue, promoting respect and understanding between both communities and, hopefully, rolling back the years of conflict we have experienced. We find ourselves standing in a place that is not very nice. We are continually justifying ourselves, fighting for our rights and explaining who we are. We know there is a lack of understanding among the general public with regard to who we are.

**Deputy Marcella Corcoran Kennedy:** I thank our guests for coming before the committee and I welcome those who are present in the Gallery. I spoke to the latter earlier and discovered that one of their number is a native of Offaly. It was lovely to meet all of them.

Our guests’ presentations have been both informative and educational. In the context of what they are seeking, have our guests liaised with the Department of Justice and Equality’s Traveller policy division? Have they engaged with the Garda racial, intercultural and diversity office? Our guests stated that the fact Travellers are not identified as a separate ethnic group excludes them - unless they have to do battle - from the various projects to which they want access. To what type of projects are they referring? Of the 40,000 members of the Traveller community to which reference was made, how many are actually settled, how many move during the summer months and how many are always on the move throughout and out of the country?

I take our guests’ point with regard to recording Traveller history. It is extremely important that it should be recorded. I have seen many old photographs of members of the Traveller community and, as a county councillor and a member of my local authority’s Traveller committee, I received the magazine for a number of years. I found the magazine fascinating and there is no doubt that the Traveller community has an incredible history which we do not discuss enough.

Mr. Collins referred to the Roma community in Romania and ethnic recognition. Is there any evidence available in respect of how successful this recognition has been for the Roma community in Romania? What can we learn from what happened in that instance?

**Chairman:** The Deputy posed a number of questions. Who would like to respond?

**Ms Brigid Quilligan:** I will take a stab at answering some of them and then others can come in. We are in close contact with the Department of Justice and Equality’s Traveller policy division on an ongoing basis in the context of the question of Traveller ethnicity. The division is fully aware of our campaign during the past 25 years to have our ethnicity recognised. I am sure those in the division are blue in the face listening to us. We are of the view that there is a blockage somewhere along the line. The division is the liaison between us and the various Ministers. As Mr. Collins stated, we held a conference on ethnicity last September. That conference was supported by the national Traveller monitoring and advisory committee, which comes under the remit of the Department. With the exception of one individual, every Traveller present was in favour of our ethnicity being recognised. The Department is, therefore, fully aware of our position on Traveller ethnicity. We try to work with the Department in a collaborative way and we hope to work with it in an even more collaborative way on the issue of Traveller ethnicity. We seek its support in respect of that matter.

We also liaise with the Garda racial, intercultural and diversity office. The national groups

meet representatives from the office once a year and we attend its conference. Again, there is an issue in terms of our being recognised as an ethnic group. We can liaise with the office's liaison officers throughout the country but, again, it is very wishy-washy. For example, one of our members went into the Garda station in Ballyshannon-----

**Chairman:** I would prefer if Ms Quilligan would not discuss that matter.

**Ms Brigid Quilligan:** One of our members went into a Garda station to report an incident involving a politician under the Prohibition of Incitement to Hatred Act and to make a complaint. The garda on duty was not aware of the existence of the legislation to which I refer and advised the person that it would not apply to them in any event because they were not a member of an ethnic minority. We collaborate with people but obviously there is room for even further collaboration.

On nomadism, the Irish Traveller Movement is currently hosting a national conference to deal with the crisis we face in the context of accommodation. The most recent figures available to us will be released at that conference today. We can, therefore, submit them to the Chairman for distribution to members later in the day.

**Mr. Martin Collins:** The key message in recognising Traveller ethnicity is to establish the principle and to ensure that this is reflected in legislation or in the Constitution. As a number of speakers indicated, this, in itself, will not act as a panacea but it is a step in the right direction. It needs to be followed up with a policy and legal framework which can, in turn, create the conditions in which our existence and contribution to Irish society can be affirmed and celebrated. Under international law, the right to self-identification is sacrosanct. However, as a result of the hostile environment in which we live, it is easier for Travellers to choose not to be Travellers. We need to reverse that and consider how we can create the conditions in which one's identity can be affirmed and celebrated. There is no doubt that many more people would identify themselves as members of the Traveller community if we created a context in which our ethnicity is affirmed and celebrated and an infrastructure which supports that ethnicity. It is not a question of how many Travellers want to pursue a nomadic existence or wish to research, practice and speak the language, rather it is a question of choice. However, we do not have that choice because we have not created the conditions that would facilitate it. I do not know how many Travellers want to be nomadic, speak the language or have their culture reflected in the educational curriculum. It is a question of creating the conditions in which people can make these choices, which can only be done by recognising Traveller ethnicity and introducing a legal and policy framework, whereby one is free to choose to give expression to one's identity. We do not have that luxury.

Irish society has made considerable progress in terms of human rights, although we still have a long way to go. It is not that long ago when homosexuality was criminalised. Thanks be to God, that is no longer the case. Recently there was an apology to the victims of the Magdalen laundries. Several years ago the then Taoiseach, Mr. Bertie Ahern, apologised to the victims of clerical sexual abuse. We are becoming more enlightened as a society, but we want that spirit of inclusivity extended to our community. Frankly, we have not seen this happen yet.

**Chairman:** We are discussing the issue and listening today.

**Ms Susan Fay:** Deputy Marcella Corcoran Kennedy raised the issue of services or protections that were not available. International human rights and equality protections do not automatically include Travellers because Travellers are not recognised as an ethnic group. I have

made an interesting observation on the benefit of recognising Traveller ethnicity. It is interesting that Deputy Pádraig Mac Lochlainn needed to ask Ms Quilligan and Mr. Collins about their history. All of the members before me are educated and we should know. There are many versions of history. As a woman, for example, I often feel women have been written out of history because history is written by men. Travellers and their contribution have been written out of history. We should have been taught it in school.

There is more. When I learned about Travellers in the civil, social and political education, CSPE, programme, it was about deprivation. We do not learn about the richness of their culture. Ethnicity recognition will bring about an enrichment of society by valuing an indigenous group. It must be noted that there have been cuts to the Traveller education budget. On average, €17 million per annum used to be spent, but in 2010 that budget was cut totally. Many of the special provisions, for example, the Traveller transport scheme and the allocation of special teachers, were axed. That pain will be felt for generations to come.

We should know the history of Travellers. I hope ethnicity recognition will bring about value and respect.

**Deputy John Paul Phelan:** I do not want to repeat the comments of others. I have often heard Mr. Collins speak. He is a powerful advocate. However, I have never heard Ms Quilligan speak. She should do so more often. I was surprised by her contribution. Coming from Kilkenny and having been a member of the local authority which was involved with the Traveller community, I want to focus on a specific comment made by Ms Quilligan on a matter of which I was not aware, namely, the suicide rate among the Traveller community.

In the context of our discussion on ethnicity, is there practical discrimination? I agree that there is casual discrimination, even among people who regard themselves as educated and politically correct and who throw around phrases not heard in the past. I often speak with my mother. She is elderly, but she refers to the symbiotic relationship between small rural farmers and the Travellers who visited areas during the summer while she was growing up in the 1940s and 1950s. As Ms Fay mentioned, that relationship changed in the 1960s and 1970s.

Is there a denial of access to services? While the settled community has always regarded mental health issues as a taboo subject, are they even more so in the Traveller community? It is probably too much to expect a brief explanation, but why is there such a significant disparity in the rate of suicide between the Traveller community and the settled community?

Mr. Collins is right about newspaper headlines. A member of the Traveller community who does something is identified as being a Traveller. If a politician does something, he or she is identified as being a politician. We have empathy in that regard.

**Deputy Finian McGrath:** That is not all that is said.

**Deputy John Paul Phelan:** If someone in the settled community does something, the same tagging does not take place. Will our guests answer these questions, please?

**Ms Brigid Quilligan:** Like others, I attribute the high suicide rate to years of extreme marginalisation. People internalise it. Consider any minority across the globe that has been marginalised or excluded for generations, for example, the Aboriginal peoples of Australia or America or the Maori of New Zealand. The suicide rate among such peoples is higher than it is among the majority population.



## RECOGNITION OF TRAVELLER ETHNICITY: DISCUSSION

Ms Fay and Mr. Collins, whose organisation deals with health matters more than ours, might address my next point. There is an issue in accessing mental health services. If Travellers can access them, they must then justify their culture to their counsellors. Some Travellers do not have access to a doctor because they cannot register with one. A difficulty is presented by the fact that it is not culturally appropriate to access mental health services and that the person with whom the Traveller is dealing does not value that culture. Not only must one discuss one's mental illness, but one must also justify one's ethnicity. That has been my personal experience, but, of the Travellers present who I know, each has been impacted on by suicide. It is an epidemic. I come from Killarney and the number of people close to me who have passed away through suicide in recent years is shocking.

A component of this issue is the crisis of identity and not feeling part of anything. People need to have a sense of belonging. Thank God for the increased awareness of the fact that good mental health is as important as physical well-being. Mr. Thomas McCann, a Traveller psychotherapist, refers to the link between mental health and oppression. The effect on our people is staggering. It is a generational issue. My earliest incident of discrimination was as a four year old in school. My young son is 13 years of age and attends a good school that has good policies, yet everyday he must correct someone who uses the word "knacker" and act like an advocate for his community. Can members imagine the weight on a 13 year old's shoulders? If someone makes an anti-Traveller comment, he feels he must correct it. This happens everywhere our children go. It is no surprise that the suicide rate is higher, but I am sorry that I am not able to elaborate further on the matter. Perhaps Ms Fay might contribute.

**Ms Ronnie Fay:** To put the matter in context, one of the main human rights abuses being experienced by Travellers relates to health. The all-Ireland Traveller health study was undertaken in 2007 and published in September 2010. It showed a mortality rate three and a half times the national average between men, women and children, a huge disparity in life expectancy, high levels of morbidity and high levels of mortality due to suicide. The abuse is that since that time there has been no action plan to address the findings of the all-Ireland health study. The Department of Health has refused to develop core recommendations to develop an action plan to address the findings of the study. The Traveller health budget has been decimated both pre-austerity and following it. The criminal aspect is that it was used to balance the HSE's books in 2006 and 2007 and the legacy continues today. There are not enough resources to address the Traveller health inequalities.

The third issue relates to the new directorates being set up in the health service. The national Traveller health advisory committee has not met since last October because we are not allowed to meet owing to the row about the lack of an action plan. This is disgraceful in terms of human rights and the matter must be addressed.

The mental health issues have been well documented. To relate them back to ethnicity, one of the practical implications in the denial of Traveller ethnicity is the mindset of many civil servants at both national and local level where the default mechanism is one of assimilation. The Traveller accommodation budget has not even been drawn down. Even in times of austerity there is an underspend and many Travellers are forced into private rented accommodation and dispersed. Young women with children live in apartment blocks and are totally isolated. They miss their mothers, sisters, aunts and cousins. All of this has a big impact on mental health.

A big issue that emerged in the all-Ireland Traveller health study was the level of trust. Approximately 40% of Travellers had trust in the health service, while the level among the general population was 84%. Many issues arise in terms of access and quality of service. The big

challenge is the outcomes from services. The way to address this is to have an ethnic identifier across all administrative systems in order that we can see what is happening in education, health and the provision of accommodation and the outcomes. We do not have that information. The danger is that Travellers will be excluded if the ethnic identifier has to be introduced under data developments at a European level because they are not recognised as an ethnic group. There are huge practical reasons for the recognition of Traveller ethnicity, not just legal or ideological but also practical reasons that affect their human rights on a daily basis.

**Deputy Anne Ferris:** I am sorry I was late and missed the presentation. Unfortunately, I was at another meeting. However, I have listened to the answers given to the various questions asked.

Some of the statistics and stories related are shocking. Ms Fay is correct to say people in the settled community just get on with their lives and do not give a second thought to the discrimination experienced by the Traveller community.

I live in Bray where we have a great Traveller community. The training and development centre run by Mr. Jim O'Brien is fantastic and does tremendous work. Like other members, I was a member of a local authority and involved in housing and accommodation matters.

I do not have a question as such. Prior to today I always felt I knew a lot about Travellers, but it is clear that I do not. I urge the Chairman to invite the delegates back again, as it would be interesting to hear stories from some of the accompanying Traveller men and women to give us more information. Information is power. I hope the committee can get the Minister on board to progress the issue.

I thank Deputy Pádraig Mac Lochlainn for being rapporteur for the committee and the tremendous work he has undertaken.

**Senator Ivana Bacik:** Like Deputy Anne Ferris, I apologise for being late. I was also at a meeting and then had to be in the Seanad Chamber and got delayed. I wanted to attend this meeting. I also commend Deputy Pádraig Mac Lochlainn for putting the issue on the agenda of the committee and thank the delegates for attending.

As a lawyer and someone who has worked on equality legislation, I have always instinctively believed the recognition of Traveller ethnicity is important for legally symbolic reasons to do with equality. I am particularly interested in the last comment made by Ms Fay on the practical reasons for recognition of Traveller ethnicity. That is something we must emphasise because some of the time the argument is made very much in human rights language, something we all appreciate, but there is also an important case to be made on the practical implications. People ask what is the point of it and why one should seek it. That is an important point for the committee to take on board.

**Chairman:** I thank members for their questions and co-operation. The presentations were very powerful and I am sure all would agree it has been a good initial interaction. The consensus is that we will have further interaction later in the year, if possible, to tease out some of the issues raised. It seems one issue is the understanding of ethnicity which has been well explained and my understanding has improved as a result. It is not about race or culture; there is also a sociological aspect which we must tease out. One speaker referred to a lack of understanding and knowledge. If we can add to this, we will do something good. We have made a start today and will take it from there.

## RECOGNITION OF TRAVELLER ETHNICITY: DISCUSSION

I was also struck by the richness of tradition outlined and would like to learn more about it. I sense that there is a very rich tradition, but not many people know about it. I do not know enough about it and would like to learn more. It would also be interesting to know about the history of Travellers.

The delegates might not wish to comment further as time is getting tight, but my sense is that, in addition to Travellers, there are traders who are sometimes confused about the Traveller community. People mix them up. We must take into account the fact that there might be people without Traveller ethnicity who can give Travellers a bad name owing to their behaviour.

**Mr. Martin Collins:** Some of them are Travellers.

**Chairman:** That is one issue we could address. Mr. Collins referred to being equal but different. Difference is always an issue. If we do not understand something, we can be afraid of it. This is a start in that regard.

I thank the delegates for attending and their interesting contributions. The matter is a complex one. We are in the hands of our expert rapporteur, Deputy Pádraig Mac Lochlainn, who will advise us on the next step. I thank everyone for attending, including those in the Visitors Gallery. We will follow the issue closely and I hope we will have a further discussion and debate on it before too long.

The joint committee went into private session at 3.30 p.m. and adjourned at 4.05 p.m. until 9.30 a.m. on Wednesday, 24 April 2013.

# DÁIL ÉIREANN

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AN COMHCHOISTE UM DHLÍ AGUS CEART, COSAINT AGUS COMHIONANNAS

JOINT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY

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*Dé Céadaoin, 12 Meitheamh 2013*

*Wednesday, 12 June 2013*

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The Joint Committee met at 09.30 a.m.

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## MEMBERS PRESENT:

Deputy Marcella Corcoran Kennedy,  
Deputy Alan Farrell,  
Deputy Seán Kenny,  
Deputy Pádraig Mac Lochlainn,  
Deputy Finian McGrath,  
Deputy John Paul Phelan,

Senator Ivana Bacik,  
Senator Paul Bradford,  
Senator Martin Conway,  
Senator Eamonn Coghlan,\*  
Senator Katherine Zappone.

\* In the absence of Senator Rónán Mullen.

In attendance: Deputy Aodhán Ó Ríordáin..

DEPUTY DAVID STANTON IN THE CHAIR.

*The joint committee met in private session until 11 a.m.*

### **Development of New Prison in Cork City: Motion**

**Chairman:** The purpose of today's meeting is to discuss the motion re proposed approval by Dáil Éireann and Seanad Éireann of the development of a prison in the townland of Rathmore in the city of Cork. A briefing document has been circulated. The format of the meeting is that the Minister will brief the committee on the motion and then there will be a question and answer session. I invite the Minister to introduce the motion.

**Minister for Justice and Equality (Deputy Alan Shatter):** Thank you, Chairman. I am happy to introduce the motion. I thank the committee for delaying until 11 a.m. this morning as, unfortunately, I had a Cabinet meeting which took somewhat longer than anticipated.

The existing prison in Cork, whose main cell block dates from the early 19th century, is no longer fit for purpose. Conditions in the prison are particularly poor; the prison does not have in-cell sanitation, it lacks the basic infrastructure required of a modern prison system and suffers from chronic overcrowding - all of which have been strongly criticised by the inspector of prisons and places of detention and the council of europe committee for the prevention of torture and inhuman or degrading treatment or punishment, CPT. The Inspector of Prisons and Places of Detention is of the view that the maximum capacity of the prison should be 146 prisoners. However, the prison has typically accommodated 270 or more prisoners - 80% more than its design capacity.

Early in my appointment as Minister, I visited Cork Prison and saw at first hand the chronic levels of overcrowding and inadequate physical infrastructure. I subsequently instructed the director general of the Prison Service, Mr. Michael Donnellan, to come up with proposals to address these serious issues as a matter of urgency. A strategy entitled, Unlocking Community Alternatives - a Cork Approach, was submitted to me early in 2012, following which I announced that I would proceed with the implementation of the strategy to address overcrowding and accommodation issues in Cork Prison. The Prison Service was given approval to proceed to prepare detailed plans for a new prison in Cork city adjacent to the existing prison on Rathmore Road.

The main purpose of the new prison facility is to replace the substandard prison accommodation in Cork and, in particular, to provide a modern prison facility designed on the principle of rehabilitation and resettlement. The construction of a new, modern prison in Cork will eliminate the practice of prisoners having to slop out, provide adequate and suitable accommodation for all prisoners in accordance with our national and international obligations and will also provide the infrastructure necessary for the education and rehabilitation of prisoners thus enhancing public safety. Building on the site adjacent to the existing prison will also ensure value for money for the taxpayer. Deputies and Senators will be aware that the Cork Prison visiting committee recently expressed concern in its annual report for 2012, which I published, about the archaic and Dickensian conditions in some parts of Cork Prison and has welcomed the Government's commitment to a new prison in Cork.

The day-to-day design capacity for the new prison complex is approximately 275 spaces for prisoners based on double-cell occupancy. The prison will have a peak accommodation capacity for 310 prisoners but that will only be reached in emergency-type circumstances. All of the

cells will be of a size acceptable to the Inspector of Prisons and Places of Detention for double occupancy and all will have integral toilets and showers. I am satisfied that the planned capacity of 275 prisoners is adequate for the needs of the prison's catchment area.

The development will consist of buildings of a floor area of approximately 15,000 sq. m on a site of approximately 2.64 hectares. The buildings will be one, two or three storeys in height. The secure facilities will be bounded by a standard height prison perimeter wall approximately 7.2 m in height. As can be seen from the illustration of the building it is effectively a H shape.

Development consent for the proposed new prison development in Cork is being sought under Part 4 of the Prisons Act 2007. Part 4 sets out a special procedure that may be applied for the purpose of determining whether consent should be granted to larger prison developments. The purpose of the 2007 Act was to provide a more open and transparent mechanism for major prison developments under which an environmental impact assessment meeting EU standards must be prepared and where the Houses of the Oireachtas make the decision whether to grant development consent. This is done in the form of a resolution, which we are discussing today, which must be then confirmed by an Act. The confirming legislation can only be published after the resolution has been passed because the dates of passing of the resolution must be included in the text of the Bill. The initial stages of the process have already been progressed. On 30 June 2012,<sup>1</sup> I issued a direction under section 18 of the Prisons Act 2007 that Part 4 of the Act is to apply to the proposed construction of a prison on a portion of the site used as Cork Prison.

The Director General of the Prison Service appointed the Sweett Group to carry out the environmental impact assessment. The assessment was laid before both Houses of the Oireachtas on 8 November 2012. On that date, public notice was given of the proposed prison development, the environmental impact assessment and visual representations of the proposed development were made available to the public and observations and submissions were invited. The Prisons Act 2007 provides for a six-week consultation period.

A rapporteur, Mr James Farrelly, was appointed to prepare a report identifying the main issues raised and summarising the submissions and observations received. His report has been laid before the Houses of the Oireachtas and published. The purpose of the report of the rapporteur is to identify those who have made submissions, identify the main issues raised and to provide a summary of the submissions and observations received. There is no provision for the rapporteur to comment on the validity or otherwise of submissions made nor is there any provision for him to make any recommendations. Twelve submissions, including a detailed submission from Cork City Council, and several petitions were received as part of the public consultation process, which raised a number of issues and concerns about the proposed development.

To facilitate the Houses of the Oireachtas in their consideration of the matter, the Minister must lay before the Houses a document stating the location, purpose and size of the development, its land use requirements and an estimate of any residues and emissions expected; an environmental impact assessment, visual representations of the exterior of the development, and the report of the rapporteur. I took the opportunity to lay a document, in accordance with section 26(3) of the 2007 Act, setting out my observations on the environmental impact assessment and the rapporteur's report.

Moving from the background documentation to the proposed resolution, which is to be considered by the joint committee, the resolution is the consent required for the Cork Prison development to proceed. It is, in layperson's terms, the planning permission for the prison. It follows the format prescribed by section 26 of the Prisons Act 2007, including the requirement to list

the main measures taken to avoid, reduce or off-set any possible significant adverse effects of the development on the environment. It also details an alteration to the original proposals that I have made in response to concerns expressed during the public consultation process and sets out the conditions that are to be complied with in the construction of the prison.

Before turning to the details of the issues being addressed, I repeat that while the resolution is the planning permission, it must still be confirmed by an Act of the Oireachtas before it takes effect. If the necessary resolution is passed, I will introduce a two-section Bill to confirm that resolution and give it statutory effect. A fundamental principle of the design and location of the prison has been to minimise and mitigate the impact of the development. The environmental impact assessment goes into considerable detail on the mitigation measures proposed to minimise adverse impact on local residents. The public consultation process and the rapporteur's report identified specific concerns on the part of local residents. In so far as is practicable, further measures are being taken to address these concerns.

Visually conditioned concrete with a light-coloured finish will be used on the sections of the perimeter wall most visible to the public. In order to address a specific concern raised during the public consultation regarding the impact on residential property adjacent to the proposed development, I propose to alter the development, in accordance with section 25 of the Prisons Act 2007, by providing for the reduction of the height of the perimeter wall around the horticultural area at the northern end of the site to approximately 5.2 m. This alteration is set out in the resolution.

The Irish Prison Service will draw up a good neighbour policy which will provide a framework under which the concerns of local residents during the construction phase can be fully dealt with. The Irish Prison Service project manager will act as liaison officer and will set up a local consultation group to address any issues that arise during the construction period.

A construction environmental management plan will be drawn up by the principal contractor and approved by the Irish Prison Service and implemented in keeping with best practice. The implementation of a traffic management plan will form a key part of the construction environmental management plan. The contractor and the Irish Prison Service will liaise closely with the Garda Síochána, Cork City Council and other interested parties in preparing a traffic management plan that will minimise the impact of construction traffic on local residents and businesses. It is expected that there will be no increase in vehicular or pedestrian traffic once the new prison is operational.

As regards security issues, the existing prison is the only closed prison in the State that does not have a prison standard perimeter security wall. As the new prison will have such a wall and will also have an outer *cordon sanitaire* secured by a 2.5 m fence, security risks will be significantly reduced. I would like to emphasise that in the context of some concerns expressed by local residents. This will be a more secure prison in the context of the perimeter walls and the other constructions to take place than is the current prison. In saying that there has not been any major security issues, in practical terms, in recent years with the current prison. The need to prevent drugs or contraband being thrown into the prison from outside was also carefully considered in the design of the prison and informed the positioning of perimeter blocks, wall and building heights and distances of recreational yards from points outside the building.

With regard to privacy issues, the CCTV system will be restricted to ensure that it is not used in a manner that facilitates viewing into residential property. That is something about which local residents should not have concerns. In addition, obscured glazing will be used in



all windows overlooking neighbouring residential property.

In order to mitigate noise pollution and dust during the construction of the prison, the perimeter wall will be constructed before construction of the prison building begins. Extensive noise, vibration and dust monitoring will be undertaken during construction. An extensive professional programme of vermin eradication will be undertaken on the site and its environs in the weeks immediately preceding the commencement of the works.

As regards local infrastructure and services, the Irish Prison Service and the selected contractor will engage fully in discussions on drainage and water supply with Cork City Council at detailed design stage. Sustainable urban drainage design system principles will be applied to the site.

As there is a need urgently to proceed with the project because of the chronic overcrowding and inadequate conditions in Cork prison, I am anxious for the resolution to be passed by both Houses before the summer recess so that tendering for the construction of the new prison can proceed.

This is a major development in the context of our Prison Service in providing a new modern, fit for purpose prison to meet our needs in this area. I am pleased that I have available to me the funding required for this project to proceed. I thank my Government colleagues for their support with regard to this particular project at a time when we know that money is scarce, but it is of huge importance if we are to deal with the issues of offending and reoffending, meet our international obligations, ensure that people are treated in prison in a humane way and that we are in a position within the Prison Service to do what is necessary in providing supports, and ensuring that those who are returned to the community from prison are less likely to reoffend than has been the case in the past. It is important that we have this type of new modern prison facility, which I hope would receive the full support of members of the committee.

**Chairman:** I thank the Minister. For his information, a number of the committee members visited Cork Prison last year and we were struck by the need, as the Minister has suggested, for major changes to be made. A 19th century building does not lend itself to any major redevelopment and therefore I personally believe what the Minister is doing is correct. We saw the overcrowding and the conditions in the prison and it is urgent that this be done. I am fully behind this proposal.

I am also interested in Unlocking Community Alternatives - a Cork Approach, which links in with one of the reports the committee sent to the Minister on penal reform earlier in the year. We are anxious that the review the Minister has undertaken would progress. It is very welcome that this is happening and as a committee we are glad to be able to feed into that and assist in any way possible. Deputy Mac Lochlainn is on his own. Does he want to ask any questions?

**Deputy Pádraig Mac Lochlainn:** I was one of the members of the delegation that visited the prison and in fairness to the governor, from the outset he made it clear that the conditions are unacceptable. We desperately need a new prison and therefore we are very enthusiastic about this proposal.

In fairness I note the Minister has gone some way to addressing the planning concerns. I presume that is the reason the Act was introduced in 2007 because where a prison is built is always a contentious issue. We had an opportunity to see the new site and to get a flavour of some of the challenges. A number of the issues are outlined in the summary from the rapporteur



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including proximity of houses to what will be huge walls and so on. I note the Minister has gone some way towards addressing those concerns.

We support the motion. We must move as quickly as possible to the construction of a new prison and also to meet our responsibilities to rehabilitation and adhere to international best standards. I do not know if it is possible to determine if there is more we can do to address the residents' concerns about noise during construction stages. Some of them spoke about the possibility of window replacements in the houses. I urge that we do all we can to address the residents' concerns but it is in the public interest for us to proceed. With the caveat of the Minister doing what he can to address residents' legitimate concerns in the area, I support the motion.

**Deputy Alan Shatter:** I thank the Chairman and Deputy Mac Lochlainn for their comments. I very much value members of this committee visiting our prisons. At this stage I think I have visited all the prisons in the State and done so quietly without any media palaver. I thought it was important that I meet all our governors and have an opportunity to see conditions. I took the opportunity to talk to some prisoners when I visited the prisons and many of those working in the Prison Service.

Without a doubt we had to do something about Cork Prison. It is a great pity that at a time when the State was more flathulach with money this development did not occur at least ten years ago but, nevertheless, I very much value the support of the committee in what we are doing. We are very conscious of concerns of residents. That is the reason we have responded in the way we have and the reason we will have in place a senior official to engage in liaison with the residents if issues arise during the construction phase. The purpose of building the outer perimeter first is to ensure that once it is constructed, the internal construction works have as little impact on local residents as is possible. I am happy to say to the committee, and particularly to Deputy Mac Lochlainn who raised the issue, that we will maintain that liaison and try to maintain good relations. I am conscious that when a new building of this nature is being constructed there is always some local concern. The reality is that this will be a much better facility than the current one. It will provide greater security as opposed to lesser security.

In the context of the region generally and Cork in particular, the provision of such new facilities, the other work we are doing within the Prison Service such as the community based measures for dealing with offenders in Cork, and the pilot scheme we have running are all designed to try to ensure we reduce reoffending and that, where possible, people can be rehabilitated within our prisons while at the same time properly serving the sentences imposed by the courts. People are imprisoned for very serious offences and the general community must understand the State will play a role in deterring people from offending. However, having played that role, it must do what is necessary and in the public interest to try to ensure people do not re-offend. This is all part of what is necessary and I greatly welcome the joint committee's support in this regard. When the project is complete, I am sure members of the joint committee will wish to visit and have a look at what is there. There will be two phases in that the construction phase must be completed, after which there will be the fitting-out phase. At present, the projected time for opening the prison is in or about the spring of 2016. Were we able to achieve that quicker, I would be very happy for us to so do and I reiterate I appreciate the joint committee's support for what we are doing.

**Chairman:** I thank the Minister. Are there plans for the old complex?

**Deputy Alan Shatter:** That is an issue to which we must give further consideration, as once we move into the new complex, a large, old and unfit for purpose building will remain.

Clearly, it cannot be used for what it has been used for in the past. As to whether it can be used for some other purpose or something in the public interest or whether what I expect would need to be some fairly dramatic internal change within the building could result in it being available for some alternative use are matters we can consider in the future. However, we are a couple of years away from being obliged to make decisions in that regard.

**Chairman:** I thank the Minister and his officials for their attendance.

### **Messages to Dáil and Seanad**

**Chairman:** In accordance with Standing Order 87, the following message will be sent to the Dáil:

The Joint Committee on Justice, Defence and Equality has completed its consideration of the following motion:

That Dáil Éireann:

noting:

— that the Minister for Justice and Equality, having considered the need for a new prison in the Cork area, has decided to proceed with the development of a prison on a portion of the site used as Cork Prison, in the townland of Rathmore and city of Cork;

— that the Minister for Justice and Equality has caused the documents specified in section 26(2) of the Prisons Act 2007 (No. 10 of 2007) relating to the development of a prison to be laid before each House of the Oireachtas together with a document containing the observations of that Minister on the environmental impact assessment and the report of the rapporteur;

— that the proposed development relates to the construction of a prison:

(a) located on a portion of the site used as Cork Prison, in the townland of Rathmore and city of Cork;

(b) for the purpose of accommodating approximately 300 prisoners;

(c) which shall consist of buildings of a floor area of approximately 15,000 square metres within a site of approximately 2.64 hectares;

(d) the secure facilities within which shall be bounded by a perimeter wall approximately 7.2 metres in height; and

(e) which shall consist of buildings with a height of one, two and three storeys;

— that the following alteration having been made by the Minister for Justice and Equality to the development, in accordance with section 25 of the Prisons Act 2007 (No. 10 of 2007), in order to mitigate its visual impact:

— the reduction of the height of the perimeter wall forming the eastern, western and northern boundaries of the horticultural area at the northern end of the site to approximately 5.2 metres;

— that an environmental impact assessment was prepared with respect to the proposed development;

— that the Minister for Justice and Equality invited submissions or observations relating to the development of the prison from members of the public:

(a) by means of advertisements placed:

(i) in the following national publication on 8 November, 2012:

*The Irish Examiner*; and

(ii) in the following local publication on 8 November, 2012:

*The Evening Echo*;

(b) by the erection of site notices at two locations on the perimeter of the site; and

(c) by causing an announcement of the proposed development to be published:

(i) on the website of the Irish Prison Service; and

(ii) on the website of the Department of Justice and Equality;

— that the proposed development will not have any significant effect on any European Site, within the meaning of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011);

— that the main measures taken to avoid, reduce or offset any possible significant adverse effects of the development on the environment are:

(a) the use of visually conditioned concrete with a light-coloured finish on the sections of the perimeter wall most visible to the public;

(b) the implementation of a traffic management plan as part of the construction environmental management plan;

(c) the mitigation of light impact by the use of low-level lighting and lighting cowl and the directing of all security lighting, other than the lighting in the area between the perimeter wall and the outer fence, inwards and away from residential property in the area of the prison boundary;

(d) the application of sustainable urban drainage design system principles to the site with the aim of ensuring that the surface water run off rate shall not exceed existing site greenfield rates;

(e) restrictions on the CCTV system to ensure that it is not used in a manner that facilitates viewing into neighbouring residential property;

(f) the use of obscured glazing in all windows overlooking neighbouring residential property;

(g) the mitigation of noise and dust by the construction of the perimeter wall before commencement of the construction of the prison buildings;

and

(h) appropriate landscaping of the entrance and car park areas;

— that a visual representation of the exterior of the completed development appears at the end of this resolution;

— that the conditions relating to the construction of the new prison to be complied with by the principal building contractor or developer engaged by the Minister are:

(a) that the development shall not vary in any material way from that outlined in the environmental impact assessment and the visual representations of the exterior of the completed development as laid before the Houses of the Oireachtas;

(b) that the construction schedule shall give priority to the construction of the perimeter wall in order to minimise the impact of construction within that perimeter on persons residing in the local community;

(c) that construction shall not commence until a construction environmental management plan has been drawn up by the principal contractor and approved by the Irish Prison Service and implemented in keeping with best practice and in particular the construction phase mitigation and other measures specified in sections 3.2, 3.4, 3.5, 3.6, 3.7, 3.8 and 3.11 of the environmental impact assessment shall be adhered to by the body or bodies contractually responsible for the construction of the development including any subcontractors;

(d) that normal construction and excavation work shall only take place between 08.00 hours and 19.00 hours Monday to Friday and between 08.30 hours and 16.30 hours on Saturdays, with no such work taking place on Sundays or public holidays;

(e) that an extensive programme of vermin eradication on the site and its environs shall be undertaken in the weeks immediately before the commencement of the works; and

(f) that appropriate noise, vibration and dust monitoring shall be undertaken throughout the construction period;

and

resolves to approve the development of the said prison in the townland of Rathmore and city of Cork.

In accordance with Standing Order 72 the following message will be sent to the Seanad:

The Joint Committee on Justice, Defence and Equality has completed its consideration of the following motion:

That Seanad Éireann:

noting:

— that the Minister for Justice and Equality, having considered the need for a new prison in the Cork area, has decided to proceed with the development of a prison on a

portion of the site used as Cork Prison, in the townland of Rathmore and city of Cork;

— that the Minister for Justice and Equality has caused the documents specified in section 26(2) of the Prisons Act 2007 (No. 10 of 2007) relating to the development of a prison to be laid before each House of the Oireachtas together with a document containing the observations of that Minister on the environmental impact assessment and the report of the rapporteur;

— that the proposed development relates to the construction of a prison:

(a) located on a portion of the site used as Cork Prison, in the townland of Rathmore and city of Cork;

(b) for the purpose of accommodating approximately 300 prisoners;

(c) which shall consist of buildings of a floor area of approximately 15,000 square metres within a site of approximately 2.64 hectares;

(d) the secure facilities within which shall be bounded by a perimeter wall approximately 7.2 metres in height; and

(e) which shall consist of buildings with a height of one, two and three storeys;

— that the following alteration having been made by the Minister for Justice and Equality to the development in accordance with section 25 of the Prisons Act 2007 (No. 10 of 2007) in order to mitigate its visual impact:

—the reduction of the height of the perimeter wall forming the eastern, western and northern boundaries of the horticultural area at the northern end of the site to approximately 5.2 metres;

— that an environmental impact assessment was prepared with respect to the proposed development;

— that the Minister for Justice and Equality invited submissions or observations relating to the development of the prison from members of the public:

(a) by means of advertisements placed:

(i) in the following national publication on 8 November 2012:

*The Irish Examiner*; and

(ii) in the following local publication on 8 November 2012:

*The Evening Echo*;

(b) by the erection of site notices at two locations on the perimeter of the site; and

(c) by causing an announcement of the proposed development to be published:

(i) on the website of the Irish Prison Service; and

(ii) on the website of the Department of Justice and Equality;

— that the proposed development will not have any significant effect on any European Site, within the meaning of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I.No. 477 of 2011);

— that the main measures taken to avoid, reduce or offset any possible significant adverse effects of the development on the environment are:

(a) the use of visually conditioned concrete with a light-coloured finish on the sections of the perimeter wall most visible to the public;

(b) the implementation of a traffic management plan as part of the construction environmental management plan;

(c) the mitigation of light impact by the use of low-level lighting and lighting cowls and the directing of all security lighting, other than the lighting in the area between the perimeter wall and the outer fence, inwards and away from residential property in the area of the prison boundary;

(d) the application of sustainable urban drainage design system principles to the site with the aim of ensuring that the surface water run off rate shall not exceed existing site greenfield rates;

(e) restrictions on the CCTV system to ensure that it is not used in a manner that facilitates viewing into neighbouring residential property;

(f) the use of obscured glazing in all windows overlooking neighbouring residential property;

(g) the mitigation of noise and dust by the construction of the perimeter wall before commencement of the construction of the prison buildings;

and

(h) appropriate landscaping of the entrance and car park areas;

— that a visual representation of the exterior of the completed development appears at the end of this resolution;

— that the conditions relating to the construction of the new prison to be complied with by the principal building contractor or developer engaged by the Minister are:

(a) that the development shall not vary in any material way from that outlined in the environmental impact assessment and the visual representations of the exterior of the completed development as laid before the Houses of the Oireachtas;

(b) that the construction schedule shall give priority to the construction of the perimeter wall in order to minimise the impact of construction within that perimeter on persons residing in the local community;

(c) that construction shall not commence until a construction environmental management plan has been drawn up by the principal contractor and approved by the Irish Prison Service and implemented in keeping with best practice and in particular the construction phase mitigation and other measures specified in sections 3.2, 3.4, 3.5, 3.6, 3.7, 3.8 and 3.11 of the environmental impact assessment shall be adhered to



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by the body or bodies contractually responsible for the construction of the development including any subcontractors;

(d) that normal construction and excavation work shall only take place between 08.00 hours and 19.00 hours Monday to Friday and between 08.30 hours and 16.30 hours on Saturdays, with no such work taking place on Sundays or public holidays;

(e) that an extensive programme of vermin eradication on the site and its environs shall be undertaken in the weeks immediately before the commencement of the works; and

(f) that appropriate noise, vibration and dust monitoring shall be undertaken throughout the construction period;

and

resolves to approve the development of the said prison in the townland of Rathmore and city of Cork.

*Sitting suspended at 11.25 a.m. and resumed at 2 p.m.*

### **Recognition of Traveller Ethnicity: Discussion**

**Chairman:** The committee is resumed in public session. The purpose of today's meeting is to continue the committee's examination of the topic of recognition of Traveller ethnicity. I welcome Dr. Robbie McVeigh and Dr. Jim Mac Laughlin. I thank them for coming here today and for their assistance to the committee in its deliberations on this topic. The format of today's meeting is that they will be asked to make a brief opening statement of approximately five minutes' duration picking up their main points and then we will have a question and answer session. I ask everybody to turn off all mobile telephones because they interfere with the sound system here. That includes mine. It is not fair on the staff who must listen, etc.

Before we begin, I draw the attention of all witnesses to the position on privilege. Witnesses should note that they are protected by absolute privilege in respect of the evidence they are to give this committee. However, if they are directed by the committee to cease giving evidence in relation to a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of their evidence. Witnesses are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise nor make charges against any person or entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the long-standing parliamentary practice to the effect that members should not comment on, criticise or make charges against a person outside the House or an official by name or in such a way as to make him or her identifiable. Dr. Robbie McVeigh is on first and I call on him to make his opening statement.

**Dr. Robbie McVeigh:** I thank the Chairman. I will expect him to tell me to stop after five minutes.

**Chairman:** We will be a little flexible.

**Dr. Robbie McVeigh:** It is probably better to have what I say explored and the discussion

anyway. I will speak to the opening statement provided to the committee but I will keep it to five minutes.

In trying to help the work of the committee, I thought I would focus on two experiences that I had, essentially as an expert witness on this issue. I suppose that is important because it is sometimes quite difficult, as members will see in the statement I made to the committee, to find a case against Traveller ethnicity. In both of those processes there was an attempt to construct that case and it is important for the committee to hear that as far as it is possible for me to represent it.

In the first one, I am talking about an experience specifically focusing on Traveller ethnicity in Northern Ireland and work that I did for the Standing Advisory Commission on Human Rights which addressed the issue of Traveller ethnicity alongside other issues. In the second one, I was an expert witness in a court case in London which was addressing the question of the principle of whether Irish Travellers should be protected under the Race Relations Act in England and Wales. In both of those examples, I was an expert witness supporting the position on Traveller ethnicity but there also was an expert witness making a case against it. That is why I think the documentation is important in terms of the broad discussion of the issue.

In terms of subsequent discussions, there have been three arguments in opposition to Traveller ethnicity. The first is that it would not be good for Travellers and that it would be politically reactionary. The second is that it would be just too costly for the State to recognise Traveller ethnicity. The third, the one I will engage with substantially and which we can discuss, is that Traveller ethnicity is not proven. It is argued there is just not enough evidence to make the judgment.

The question of whether recognition of Traveller ethnicity is good for Travellers is one for Travellers to answer. Overwhelmingly in Ireland, North and South, Travellers support the recognition of Traveller ethnicity. This is a valid position to hold. I would not argue that one should not provide that analysis, but it is not the same as the question as to whether Traveller ethnicity should be recognised. It is an argument about the politics of holding the position.

On the point about recognition being too costly, there are two points to be made. The first is that cost is not the primary way in which people should make decisions about issues of justice. Second, when one considers the consequences of recognising Traveller ethnicity, both in the North and across the water, one realises there were no great costs. Travellers were more centrally incorporated into an infrastructure of anti-racist work and practice but the immediate costs were not great.

Let me address the question of whether we need more evidence, although I will not reiterate the point I made in the court case. If one considers the evidence in detail, one must conclude that the only case one can construct in opposition to Traveller ethnicity is that there should be less evidence, and that there is too much evidence in support of the principle. As I stated, if one wanted a very tangible, immediate example – I could go through them in detail – one would look to the Westview Cemetery in Atlanta, where one finds the grave of the founding father of the Irish Traveller community in the United States. His gravestone states he was born in Ireland in 1830. The really important implication is that Tom Carroll and the other Travellers who emigrated to the United States took Traveller culture and ethnicity with them. It was clearly formed before the Great Irish Famine, an Gorta Mór, so there is no question but that the identity or culture was established at least in the first half of the 19th century.



If we examine the London County Court judgment in detail, it will be evident to us that the issue of the long-established history was probably the most difficult for the court to engage with. Once it accepted the existence of that long history, it was very hard to make any case against Traveller ethnicity in terms of the established principles of *Mandla v. Lee*, the British court case that set out what needs to be established in deciding whether a group has an ethnic identity. The judgment of the judge in that case was correct. His conclusions are included in my submission but I will speak to them very briefly. The judge concluded:

Our conclusions therefore are that of the two essential characteristics, namely the long shared history and the cultural tradition, we are satisfied that both these criteria have been sufficiently satisfied.

Therefore, Travellers in Britain sufficiently met the two key criteria for constituting an ethnic group. The judge considered some of the other elements of ethnicity and found that they were broadly established. We can discuss these if the members want. The case was heard in 2000. In the intervening period, I have heard nothing that would weaken that case.

The most significant legal intervention has moved us in another direction. I refer to the recognition of the Scottish Travellers as an ethnic group. Given that Irish Travellers are an ethnic group in England, Wales and the North, and that Scottish Travellers are recognised as an ethnic group, it becomes even more difficult to argue that Travellers in the South of Ireland should not be or cannot be seen as an ethnic group. We can discuss this if the members want.

My final point is very important to the broader work of this committee. The issue of denying the ethnicity of Travellers has much wider implications for the reputation of Ireland as a country that respects human rights and equality across the world. I do a lot of work on these issues across Europe. I note that people are conscious of the denial of Traveller ethnicity at various international bodies, and this has consequences. It is important to realise that when the denial of ethnicity is carried out, it should be carried out very carefully and thoughtfully, and it should be done with an awareness of the historical and contemporary implications.

As I have stated many times, people need to realise that the Nazis denied traveller ethnicity, gypsy ethnicity, in Germany. This was one reason for the *Porajmos*, the genocide of gypsies and other travellers in the Nazi period.

There is no question but that the ongoing ethnicity denial by the State reflects badly on it. There is no question but that it does our reputation damage among the international community. We need to be very aware that in discussing a matter that, in a more immediate sense, is about the circumstances of Irish Travellers in Ireland.

**Chairman:** We might hear from Dr. Mac Laughlin, after which we will take questions.

**Dr. Jim Mac Laughlin:** I am thankful for the invitation to attend. I am a development theorist and political geographer. I find it a bit strange to be here because I am working on a book outlining the history of anarchism. Someone said to me that many of my research interests are not central to my discipline, geography. I always seem to be studying people at the edge. I have studied emigrants, Travellers and European gypsies, and I am now studying 19th-century anarchists.

My perspective is a little different from that of Dr. Robbie McVeigh in that I take a very theoretical approach to the problems of Travellers and European gypsies. Previous speakers spoke very much from an activist perspective, which is very important, but I have been aware of

the need to raise the discussion about racism against Travellers and put it into a longer historical and theoretical timeframe.

I have identified three stages in the evolution of anti-Traveller racism and the process of Traveller ethnogenesis. The first stage occurred around the second half of the 19th century, which I call the Darwinian half of the 19th century. Darwinian ideas such as the struggle for survival and the survival of the fittest, in addition to imperial expansion and nation building, were among some of the very powerful forces that were driving European and Irish history at the time. The Irish nation that was constructed in the second half of the 19th century was constructed in a very exclusive fashion, not just in an inclusive fashion. It was meant to include various interests, particularly the hegemonic ideas of the Catholic Church, as we all know now, and substantial farmers and businesspeople. In that period, Travellers were excluded. I regard 19th-century nationalism as a root cause of anti-Traveller racism historically. It is also a root cause of a process of ethnogenesis among the Traveller community. In the second half of the 19th century, the Travellers in this country had much closer relations with society, particularly rural society, than they have today. I also work on the emigration issue. Many of the people who emigrated from Ireland to cities such as Glasgow, Edinburgh and Liverpool and the other industrial cities of northern England were branded as Travellers because very often they were indistinguishable from them. The point I am trying to make is that in the 19th century the social distance between Travellers and members of rural communities in Ireland was much closer than it subsequently became and the process of nation building meant Travellers were looked upon as a blemish on the face of the Irish nation. They had to be excluded because they were considered to be a people a country did not want to advertise if it wanted to take its place in the league of nations in the 19th century.

The second half of the 19th century was a rich period in the development of Travellers' identity and history. However, that history was written out for a couple of reasons. We all know that history tends to be written by the victors, with victims tending to be excluded. During the period about which I am speaking Travellers, gypsies and nomadic people in general were not considered to have a history or identity. They did not have a history because history was understood in an evolutionary sense in that people had to be going somewhere, progressive and coming from a state of under-development and capable of development. Travellers appeared to be eternally poor and under-privileged and appeared to live in a mythical rather than an historical time.

The second important period in the evolution of Traveller identity was around the 1960s. It was a gradual period of awakening. During this period Travellers behaved much like rural people in that they left the land and moved to the cities, including Dublin, Limerick, Cork, Galway, Derry and Belfast. As stated by Dr. McVeigh, it is important that it is recognised that many of them also moved into the urban areas of England, Scotland and the southern states of North America. The 1960s and 1970s were a testing period in that it was the time when Irish society was desperately rushing towards modernity and in that rush it was anxious to distance itself from Travellers. This was followed by renewed denigration of Travellers in Irish political discourse. They were seen as the unwanted and, to use a phrase from the Welsh poet, Dylan Thomas, an unmeltable ethnic minority who refused doggedly to do under.

The period from the 1960s to the 1980s is important because during this time the resilience of Travellers came to the fore. They stuck it out in the hostile urban environments and managed to hold on to their own identity. Another reason this period is important is at the time Travellers still lacked a voice. As once stated, there are people who can speak and those who have to be

spoken for. The people who spoke for Travellers in the 1960s and 1970s tended to be priests, nuns and activists in the philanthropic area. They tended to take a condescending attitude towards Travellers and looked on them as wards of State. The struggle for ethnicity on behalf of Travellers is a struggle to move away from this attitude.

I come to the third stage which began in the 1990s. Members of this House have contributed to this stage, in particular individuals such as former Deputy Liz McManus and former President Mary Robinson. There is a growing awareness of the distinctive problems faced by Travellers and an attempt to make recompense for our neglect of them. From my point of view, what is crucially important about the period from the 1990s to the present day is that it gave birth to what the Italian cultural theorist Antonio Gramsci called “ethnic intelligentsia”. Travellers, particularly Traveller women, since the 1980s have been speaking clearly and articulately about themselves. The birth of this ethnic intelligentsia has been important in the articulation of a sense of Traveller separateness and identity.

I would like to speak about the current situation in a European context. It must be recognised that we are speaking about a minority who want recognition rather than a minority who are seeking to establish a separate state. We are not speaking about ethnic separatists. For example, they do not present a challenge to the territorial integrity of the State, rather they are an indigenous minority who have a long history and long residency in this country, despite the fact that they have been outcasts. They are seeking to remain in the country. As alluded to by Dr. McVeigh, the development of a Traveller sense of identity will need to be transnational and incorporate Travellers who are in Britain, Northern Ireland, North America and parts of western Europe.

Travellers view their ethnicity as a lodestar of cultural capital, a lifeline that will prevent them from going gently into the good night, to which I referred. They are fighting for their ethnic distinction and they are not alone in doing so. A recognition of Travellers’ ethnic distinctiveness and culture will need to incorporate all Travellers, not only impoverished Travellers. This must be viewed as something that will bring to the fore closet Travellers. Like I am sure others in this room, I know a number of Travellers who are hidden. With a future oriented sense of ethnic identity, these closet Travellers may come to the fore, which is to be welcomed. It will add to the cultural mix and the articulateness of Traveller identity. We should be encouraging a sense of multiculturalism in Ireland. A number of years ago I acted as Santa Claus for a Traveller group in Cork and I was struck by the number of Traveller children who wanted to be just like other children in that they wanted to become doctors, actors, nurses, teachers and so on. Travellers are not seeking to separate from Irish society, rather they are seeking to join it but to remain as Travellers.

**Chairman:** I thank Dr. Mac Laughlin for his fascinating presentation.

**Deputy Pádraig Mac Lochlainn:** I thank Dr. McVeigh and Dr. Mac Laughlin for coming to share their considerable expertise on the subject matter of the meeting.

I have been monitoring public discourse on this issue for some time. The delegates may be aware of the situation in County Donegal where, following confirmation that a Traveller family was to be housed in a settled part of the town of Ballyshannon, the response of a number of politicians was pretty much a call for an apartheid-type system in wanting Travellers to be kept apart from and not housed in areas in which settled people lived. What followed was the burning of the house by persons unknown. All right-thinking people across the State were appalled by the incident. However, there were a number of debates on local radio in the area before

the house was burned. One report I followed was on *The Journal* website which is part of the social media phenomenon of reporting news. I am sorry to report that 90% of the members of the public who rang radio stations or posted on *The Journal* website supported the politicians' comments. In other words, they supported apartheid against Travellers. Traveller representative groups tell me that the racism they face on the ground has never been worse. Evidently, they face resistance to the fact that there is a distinct, separate Traveller culture and complete ignorance of Traveller history and origins.

I am no expert student of Irish history and I am probably an amateur student like many people, but I know that everyone in the room of Irish origin comes from a nomadic background at some point in his or her history. We evolved from nomads into modernity over hundreds of years to become urbanised and have our little piece of land. I do not disagree with the thesis set out by Dr. Mac Laughlin. I read his book on the subject last Christmas and it is a really important contribution. It reminds the settled community that this is from where we have come. Travellers have stayed loyal to that way of life and part of it for much longer.

What are the delegates' ideas about how we start the process of education? We must twin the debates on ethnicity with a comprehensive education programme in the settled community. We have put programmes in place to support the Traveller community, although there have been huge cutbacks recently which need to stop. We must put the money back in place. How do we educate the settled community to understand this is from where they have come in order to build a bridge? How do we take the many fine writings of the delegates and get them out there?

Are there comparisons to be found? There is empathy among progressive people for Native American culture and Aborigines who were the nomadic peoples who had their way of life violently uprooted by greed and the idea of manifest destiny. Is there a comparison to be found in that context in terms of resistance to any other way of life among dominant communities? Obviously, it is not directly comparable, but are there lessons to be taken?

**Dr. Jim Mac Laughlin:** I spent approximately 25 years working in the universities sector. I have given that up as universities have become instrumental. I found undergraduate and postgraduate students very receptive when I put on courses on racism and spoke about racism against Travellers and European Gypsies. There was a great take-up of such courses and I am very hopeful about these kinds of programme. I was asked about education packs for schools. There is a greater degree of receptivity to discussion on these issues among younger people than among the older population. That emerged in the way younger people reacted against a well established Irish comedian who did not go down too well when he made terrible remarks about Travellers.

On Deputy Pádraig Mac Lochlainn's point, I would not focus too much on the extent to which we were all nomadic. My point is that Irish nationalism has historically been about land and the struggle for the independence of the island. It has been about farming and agriculture. Travellers who did not have a stake in the land were excluded from this. As they did not have a stake in the land, they were considered not to have a right to be citizens of the nation.

The affinity of Travellers with North American Indians and other nomadic peoples can be worked on. However, it might present more problems than solutions. We do not want to racialise Travellers. Basque separatists have been trying to do this and have gone to the extent of suggesting their blood type is quite different from that of any other European people. They have tried to say they are Europe's original people. I would be careful about that. However, I note the links between the nomadism of Travellers and that of North American Indians.

**Dr. Robbie McVeigh:** Ethnicity is central to the recognition of Traveller identity. Ethnicity carries with it a recognition of the dignity of a culture, which is missing if one simply regards Travellers as a sort of *sui generis* population which cannot be explained in terms of any other analysis except that they travel. Currently, directly or indirectly and by implication, Travellers are a separate group in terms of equality legislation. Ethnicity is vital to that process. There is no question in the North. As I said in the opening statement, Northern Ireland did not become a paradise for Travellers because they were recognised as an ethnic group. The recognition meant that whenever anti-Traveller racism happened, it was understood and addressed appropriately by the criminal justice system, politicians and others. Recognition provides a paradigm through which to understand statements such as those the committee is discussing.

My position on nomadism is slightly different from Dr. Mac Laughlin's. There is a fixation on the origin of Travellers and people always want to know what it is. The origin question is central to every discussion on Traveller ethnicity. It is a valid question, as is the question of from where settled people come. What one sees in Ireland is the emergence of two ethnic groups. At one point, everybody in Ireland was nomadic. The really interesting question is at what point most of us became urbanised and settled. One sees there a dialectic between two ethnicities, rather than a fixation on the origin of Travellers and whether they are really indigenous and survivors of pre-Celtic Ireland. There are valid questions to be asked about this, but it is equally important to ask, if we are settled people, from where our identity came. An important point on nomadism in the context of the committee's broader discussion is that Travellers are economically commercial nomads, which is different from hunter-gatherer societies and pastoral nomadism. The latter societies could exist without a relationship with any other community. Traveller society is commercially nomadic and based on exchange with other people. At its best, there has always been a positive synergism between the services Travellers provide and what non-Traveller, settled people have wanted. The type of nomadism Travellers have is a little different. We can have a further discussion on this, but for now we should be aware of it as the context for addressing Traveller nomadism.

A discussion of Traveller culture and history emerged in the court case. People need to be aware of it if they do not know anything about Traveller history. As I said before, the long shared history of Travellers was a core issue for the court, but it was accepted that if Traveller culture existed as an autonomous, independent, defined ethnicity before the Famine, that was enough to tick that box. Cultural tradition on its own was not really contested in that court case. People accepted that the cultural differences that are manifestly there with Traveller culture in comparison with settled culture are real, different and recognised.

With regard to common geographical origin, they are all Irish. With regard to a common language, Gammon or Cant is spoken by Travellers. With regard to a common religion, most Travellers are Catholic but the way they practise their Catholicism tends to be very different from the way settled Catholic people do it. We have had a separate parish for Travellers in Dublin, which is an indication of how different that religious practice has been with a particular focus on pilgrimage and so on. While there is a common religion between settled and Traveller Irish people, the way this religion has been practised is very different. With regard to being a minority, this is so self-evident that it did not really bear any discussion. There is no question that Travellers are a minority in terms of wider Irish society. All of those criteria were ticked in that court case and are part of that project of educating the wider settled population about why Travellers are different and the history they carry with them.

**Chairman:** Did Deputy McGrath want to come in?



**Deputy Finian McGrath:** I welcome Dr. McVeigh and Dr. Mac Laughlin to the meeting and commend them on the work they have done on Travellers' issues and rights and inclusion. Dr. Mac Laughlin spoke about an ethnic intelligentsia among Irish Travellers and how Travellers have clearly shown themselves capable of raising political consciousness about Travellers' issues. We have met some of those Travellers here in this committee and we have all been blown away by their commitment, vision and confidence in themselves. I would love to see more of that coming from the Traveller community. Does Dr. Mac Laughlin have any ideas about how we can create more leaders because I want to get away from the charitable aspect seen in the 1970s and 1980s when the local priest or schoolteacher spoke for the Travellers? I have seen that on the ground. There are tremendous, educated Travellers within the Traveller community who are visionaries. My committee colleagues and I have witnessed it here at first hand.

Dr. Mac Laughlin also raised the issue of the internalisation of feelings of social inferiority among some sections of Traveller society, which has been mentioned by Travellers' groups who have appeared before the committee. This feeling of social inferiority seems to be a major problem in the Ireland of 2013 because of negativity and racism. We are seeing issues around drugs and mental health emerging. Is this due to the internalisation of a feeling of social inferiority among Travellers?

I have a few questions for Dr. McVeigh about broader anti-racism measures and how the fact that legislation exists in Northern Ireland and England does not mean there is a warm house. It is like a protection barrier when there is a crisis. How does one create a warm house? I have heard similar comments made about northern Nationalists during the past 30 years in the North. They always felt it was a cold house for them. Given the conflict in the North and the Good Friday Agreement, there could be some linkage and we could do something to develop it.

In respect of Dr. McVeigh's point about the Nazis, genocide and criminalisation, he said the denial of ethnicity is not an abstract academic debate but a practice grounded in genocide. The number of Gypsies wiped off the face of the earth by the Nazis during the Second World War is often blacked out of history. We regularly hear about the Jews. Is there a figure Dr. McVeigh is aware of?

With regard to education, if we are talking about inclusion and protecting the rights of Travellers, it must not start at second level because I know many second level schools do brilliant work on Travellers but they are working with 14, 15 and 16 year olds. Many of them have been lost so my point is that the focus should be on preschool and primary schools. There are good primary schools that do much work on Travellers' history and culture and bring it into the broader curriculum, but it is not done as a national plan, which could be very important.

Looking across the table at us as public representatives, is there anything else we can do to support the inclusion of Travellers in the Ireland of 2013?

**Chairman:** I counted seven questions relating to leadership being drawn out or recognised, social inferiority, anti-racism measures, the "warm house" issue, the Nazis and the numbers there, education, particularly preschool and what we can do.

**Dr. Jim Mac Laughlin:** In respect of the first question, there were two reasons I got involved in this type of research because it was not my area in the early 1990s when I first got involved in it. Deputy Mac Lochlainn spoke about the house in south Donegal. One of the reasons I got involved was because in a very scenic town in the south-west of Ireland-----

**Chairman:** Dr. Mac Laughlin should be cautious and not identify any individuals.

**Dr. Jim Mac Laughlin:** I know Dr. McVeigh produced a very fine paper where he spoke about how the term “community” seems to be a warm one in Ireland. Historically, we saw communities as including everyone. Of course, the way community has been constructed in Ireland has been quite exclusive. What I am suggesting is that the prettier, more gentrified and more commercially minded Irish towns became, the less welcoming they were to Irish Travellers. My inspiration for starting out in this was a woman called Anne Doherty from Cork who was one of the founding mothers of the Traveller Awareness Group. I always had a policy of never talking to Travellers unless there was another Traveller present. Anne and a friend of hers, Chrissie O’Sullivan, were among the first members of this ethnic intelligentsia about which I am talking. What does one do to increase the size of that ethnic intelligentsia? One makes more places available, as was done in the US in the 1970s and 1980s, through a programme of positive discrimination to make more places available at third level and diploma level for Traveller women but particularly for Traveller men. We need to see more Traveller men involved in this organic intelligentsia.

The second point was-----

**Chairman:** Social inferiority.

**Dr. Jim Mac Laughlin:** Social inferiority is clearly a major issue, not only among Travellers but also among European Gypsies. I would argue that one of the strategies they use to transcend the terrible conditions they find themselves in, not so much in the inner city but in these terrible places where they live on the urban edges of contemporary Ireland, is to go on the road again. We must challenge at every opportunity portrayals of Travellers that are highly negative. We must get back to the old simple thing of accentuating the positive. I will not go into the song. Otherwise, this negativity that surrounds Travellers will be exaggerated. Many people benefit from that. It must be admitted as well that the way Irish political culture has evolved over the past 30 years has meant that there are votes in anti-Traveller racism. It has been good politics historically to support those who are vehemently opposed to having Travellers in their constituency. It is a very easy way to play to the political crowd.

**Chairman:** I thank Dr. Mac Laughlin. Does Dr. McVeigh wish to add anything?

**Dr. Robbie McVeigh:** In terms of leadership, the most important point is that it does not come cheap. The activists and leadership about which Deputy McGrath is speaking were part of a generation that emerged from Pavee Point and the Irish Traveller Movement, ITM. Those young people were graduates of properly funded public programmes that were supported by the State and the European Union. If one wants to do that as a project, one must do it with a similar issue in the North. It was modelled on the Pavee programmes but it does not happen without public funding for those projects.

In so far as I am an expert on Travellers, most of what I learned was from Traveller leaders and activists. It was that very first generation of people I met, Nan Joyce and Michael McDonagh in particular, to whom I owe a huge debt of gratitude. Michael McDonagh went with me to visit the Travellers in the States and I would not have got access to that community to report back to people here on the reality of Traveller ethnicity in the States if he had not been with me. That leadership has always been there but needs to be recognised for the wonderful national resource it is.

On the second point about the so-called warm house, I included this in the opening address but it bears repeating. When the task force report came out in 1995, this country was a beacon for progressive measures on Travellers for a State and a Government, and for properly funded NGOs that took the situation of Travellers seriously and addressed what it would mean to have a proper partnership to bring Travellers into a more equal relationship. The truly shocking thing is that we have moved backwards from being a beacon for the whole of Europe. People were looking to the model, not just to the NGOs, the Irish Traveller Movement, ITM, and Pavee Point, and what the State was doing around the task force and the genuine political work that was done around that. The really sad and depressing thing is that we have moved backwards from being a beacon for people to being at the bottom of the pile in terms of bad practice. It is hard to say that but it needs to be said. This country has done it before and we need to go back and establish the principles that led to that high-water mark of the task force on Travellers.

The third point was about the Holocaust. There is much discussion and debate on the UNESCO figure of 350,000. Some Gypsy activists have put it as high as 1 million. There is something depressing about arguing over the figures, but the UNESCO figure is 350,000 people, so it is a real genocide. There is no question about that. Related to that on the warm house point, we have a Holocaust memorial day but one will very rarely find any discussion of the situation of Irish Travellers in that context, and that is where one begins to think about the more positive things that can be done. It is very important that when we remember the Holocaust, we remember there were Travellers - not just ethnic Roma or Gypsies but also indigenous Travellers across Europe - who were part of that genocide. When we do educational work, particularly with young people, that is a glorious opportunity to connect it to the reality of Traveller lives.

The Donegal case was mentioned. Time and again over the past 30 years doing the work I have done, one hears remarks made about Travellers that are explicitly genocidal. One of the first things I did in Belfast was to challenge the notion that it was right for a councillor to say Travellers should be sent to the city incinerator. I do not think that remark would be made now but those remarks were retained in the North at that time. South of the Border we have had people saying Traveller men should be castrated, that Travellers should be sent to the Aran Islands or tagged. These are measures which have genocidal implications and which were used in the genocide of Traveller groups, and that is why the point about the abstruse academic debate is so important. This is about genocidal practice, not about what a couple of nutty politicians say.

That brings me to the politicians. While it is true that many people have made interventions mobilising anti-Traveller racism, in the work I have done across political parties, particularly in the South, people have provided leadership on this issue as well, and that needs to be recognised. From every party in the South at different times, people have gone out on a limb to do the right thing, even though there were no votes in it. We need to recognise that as well as challenging people who make outrageous, negative statements about Travellers. There is a point about accentuating the positive in that as well. At the core of this, in terms of what the political project is, we return to the point about ethnicity. Ethnicity is a practical and symbolic intervention which begins to turn around the process, so we needed to do that and move on. That creates the context in which politicians of good will from all parties can do the right thing.

**Senator Katherine Zappone:** I thank Dr. McVeigh and Dr. Mac Laughlin for coming in and providing us with the evidence. It is great to be in the presence of such great academic warriors and men who clearly practice solidarity and understand the meaning of that. My first question comes from the phrase Dr. McVeigh uses regarding making the case for “ethnicity



denial". That is very clever. This committee is working on a report and I am wondering if Dr. McVeigh could recommend any people who could come before the committee who could make that case for ethnicity denial.

Through his stories Dr. Mac Laughlin clearly explained how racism has never been worse. Given that fact, if the core to the political project is the recognition of ethnicity, perhaps both the witnesses could say a few words providing the evidence about how a recognition of ethnicity could lead towards a significant reduction in racism. That would be important for us to hear. That is largely what they are offering us, but I ask them to say it clearly.

The task force report was published in 1995, which is around the time I had just started working professionally in public policy circles, so I remember it very well and the importance of it. Why did we lose the lead we had then and what needs to change for us to recover that? Where are the resistance points that can help us in the work we do?

**Chairman:** There were three questions. One on denial of ethnicity, one on racism and ethnicity and what difference that would make, and one on the task force report, what happened and what can be done.

**Dr. Robbie McVeigh:** The obvious person to speak on ethnicity denial is a member of this committee, Senator Ivana Bacik, who is an expert in this area. Ethnicity denial means what it says on the tin. It is about saying not every group is an ethnic group. At one level, every time there is a court case about whether a group is an ethnic group, somebody on one side of the court is practising ethnicity denial, and that is fair enough as part of the court case. Travellers have done that at least twice in a court context and the courts have accepted that Travellers constitute an ethnic group. In that context it is quite perverse for a Government to continue arbitrarily, without much recourse to evidence that I can see that is in the public domain, to assert that a group is not an ethnic group when all the evidence in the public domain supports the notion that it is an ethnic group. It looks perverse in that context and does us damage in terms of international goodwill because people are aware of that going on and do not understand the practice. It would be useful to explore it with an international lawyer and we had some discussion around this at the Dublin conference earlier in the year.

At the very core of that point is a process I mentioned from the UN Human Rights Committee regarding the mission to Rwanda. This is a really significant case which was reported last year. Rwandans, post genocide, said they did not want to recognise ethnicity in the state because the recognition of ethnicity in some way was part of the process of genocide. They had a legitimate reason for making the case but the UN stated that even in that context it is inappropriate to do this. Plenty of other international mechanisms have considered the issue of how ethnicity works but that for me was the definitive case. Even where there is a clear, legitimate and understandable case for making the case for ethnicity denial, it cannot be done. If that is the case, to bring it back here to this context, the notion that one would do it perversely in the face of court judgments recommending it should be done, it starts to look embarrassing and is embarrassing in terms of any practising international lawyer who looks at the non-case that has been made. I apologise for dwelling at length on this.

The question as to why it has got worse is a very important and interesting political one. I am not sure it has completely - some things have got better and other things have got worse. One of the factors has obviously been that ironically, Ireland has become a much more multicultural country in the period since 1995. So to some extent the good will that was there in terms of specific focus on Travellers was spread much more widely in terms of the opening up of the

country to a much more genuinely grounded notion of a multicultural Ireland. However, in the process the centrality of Travellers to understanding ethnicity and racism in general in Ireland has been lost. Obviously in a broader sense that is a good thing. It is great that we have this new multicultural Ireland, which provides a new paradigm in which to further integrate Traveller equality. However, it is one where the political profile, if one likes, moved down the agenda.

That links to the question about the task force. Part of it would be to go back - the committee is having that discussion with the Traveller activists and leadership - and look at the dynamics of creating a context in which everybody from different parties bought into the notion that something progressive had to be done. I believe we have moved beyond that. It would be interesting to return to the years before 1995 and ask what was different then. A core part certainly is that anti-Traveller racism was the only game in town in terms of ethnicity and racism, and that clearly is very different. So we have to reimagine a different notion of a multicultural Ireland which includes Travellers but includes all these other groups as well.

**Chairman:** Dr. McVeigh spoke earlier about positive discrimination in education, for instance, as one of the areas where leadership could be developed. We are concerned here with ethnic group or subgroup. How can we identify who is and who is not part of the group? I will be a little facetious to emphasise the point. While we are not concerned with passports, how can we say that one is and one is not? Where is the line drawn, as there is blurring here?

**Dr. Robbie McVeigh:** That would be a process for the court. In the Kiely case I mentioned, the defence in trying to claim there was no discrimination first claimed that Travellers were not protected under the Race Relations Act, which is why the case was heard, involving my evidence. That was its first defence. It then moved on to claim that these people were not Travellers at all. All of us would recognise them as Travellers - they were Travellers. If that had ever come before the court, I think there is no question they would have been recognised. Certainly once the defence lost the point that Travellers were not protected, it then went on to claim these people were not really Travellers. That is a matter for every court to decide. It is not just true of Travellers. Somebody might present as Jewish, Irish or whatever to a court and claim to have been discriminated against on that basis and the court would then consider the substance of whether he or she belonged to that group - it would be a matter for the court. Here it is about the principle of whether Irish Travellers as a group qualify for protection under the legislation.

I do not know how much time the Chairman wants to spend on it. It is interesting to hear what Travellers would say. The Traveller witnesses would be much more interesting and embedded in terms of their sense of how they know somebody is a Traveller or not a Traveller. In the days when bars displayed "No Travellers" signs, the barperson was able to make that distinction and other people are well able to make that distinction also. There is a complex process where it is not based on skin colour but the sense of ethnic difference and identifying somebody ethnically is quite a subtle one although it is also very real. One knows from accent, from a particular way someone presents oneself, where somebody comes from and from their names. Put all those things in a bundle and at that point the court would be able to decide whether a person was a Traveller, but we all do it all the time anyway. It is not an exact science, but it is a normal part of establishing ethnic boundaries that happens all the time. It is not particular to Travellers - it is there with Irish people too.

**Chairman:** I believe one of the witnesses used the term "sleeping Travellers".

**Dr. Jim Mac Laughlin:** Closet Travellers.

**Chairman:** I ask them to develop that idea.

**Dr. Robbie McVeigh:** It is not just about Travellers but about ethnicity, if one likes. I can give two classic examples. During the Second World War, many people did not want to be ethnically identified as Jewish. The Nazis and other races had a process to put people through in order to decide whether they belonged to an ethnic group. It was one that had terrible consequences for people. However, I can think of the example of Julian Amery who was not really Jewish, but in solidarity with Jewish people identified as Jewish and ended up in a concentration camp as a consequence. It is a complex process, but it is essential to the process of ethnicity being established. It is not just to do with Travellers or non-Travellers.

**Dr. Jim Mac Laughlin:** There is the issue of ethnically defined people having a right to self-determination and political rights. I will take a wider theoretical perspective on that. Historically those ethnically-defined people who were seen to have a right to self-determination and political autonomy had to be substantial, white, capable of self-supporting, and economically powerful enough to move into that 19th century world of large nations and even larger empires. What we in Ireland and throughout western Europe are now talking about is that the nations that got to be built were not really nations at all but were multi-nations. They had entrapped within them minorities. We can think of the Nationalist minority in Northern Ireland, and also Scottish and Welsh nationalists. We can think of Basques and Tyrolese. We are talking about ethnic minorities. These are small groups of peoples and we are talking about a quite small minority in this country.

The term “closet Traveller” goes back to what I mentioned earlier about us having such negative images of who Travellers are, just as historically, Irish people were painted in the 19th century. The historian L. P. Curtis wrote about the way we were either apes or angels. Among this, albeit small, Traveller population there are very many highly articulate and cultured people. Encouraging the process of ethnogenesis would certainly be a way to speed up the conveyor belt to bring those people further to the fore.

Looking at the wider dimension, I can think of very few cases throughout western Europe, Latin America and other parts of the world where the granting of the recognition of ethnic identity did not greatly enhance the self-confidence and the sense of value these people have. We could be greatly surprised at what might emerge in the future from Irish Travellers in that regard.

**Senator Ivana Bacik:** I apologise for my late arrival. I was attending another meeting. I welcome Dr. McVeigh and Dr. Mac Laughlin whom I know by reputation. I am delighted to see them both here and I thank them for coming before the committee. I read their papers in advance of the meeting and they make a very strong case for recognition of Traveller ethnicity and this is very much to be welcomed from my point of view.

Several points sprung out at me from the papers and if they have already been addressed I apologise. The onus of proof being on those who take the ethnicity denial position is a strong argument to make because it is not an evidence-based position. There tends to be an assumption that the entire onus of proof is on those making the case for recognition so this is a useful argument and point which has been teased out, particularly in Dr. McVeigh’s paper. The anomaly whereby Travellers lose recognition when crossing the Border from Northern Ireland is also a strong point with regard to the duty of equity of recognition of rights on both sides of the Border, which sometimes we overlook but which was very much in common currency at the time of the original Good Friday Agreement. We should bear this in mind.

I welcome my old friend and long-term activist Rosaleen McDonagh, who is in the Gallery.

**Dr. Robbie McVeigh:** The broad point about self-identification is interesting. Many UN mechanisms are completely based on self-identification so if one tells a committee one is a member of a group, *ipso facto* one is a member of that group. We are already asking for a much higher standard of proof than many UN mechanisms but there is no harm in this. It is right and proper that if groups are to be protected from race discrimination then it should not be an arbitrary process. The English courts took it seriously because they do not want anybody to just be able to turn up and state he or she is a member of an ethnic minority and therefore has suffered discrimination. The Race Relations Act in Britain was transforming legislation and was defined precisely to protect ethnic groups and not other groups who may be discriminated against in different ways. This is why it is important that we bring a rigorous evidence test to the question. As I stated at the start, but it bears emphasis, if I were paid to be devil's advocate it would be hard for me to construct a case against Traveller ethnicity. There is too much evidence with court cases and everything else. The only position the State can have is to continue to deny it without providing evidence to support this position. It is an intolerable position.

**Chairman:** Will Dr. McVeigh remind the committee what the State needs to do to recognise ethnicity? What steps must be taken legally?

**Dr. Robbie McVeigh:** It has a number of dimensions. With regard to the CERD process the State has been asked to change its position and it would be important to state we accept Travellers are a minority and proceed on this basis. The reason for the specific naming of Travellers in the North in the Race Relations (Northern Ireland) Order 1997 was precisely because people did not want to wait for 20 or 30 years for clarity on the issue. There is every case for having specific legislation which would name Travellers in precisely the way they are named in the North. People are broadly happy with this description. It clearly protects Travellers, but does not open up the category of Travellers to other groups which people do not want to see included. It is the obvious model for domestic legislation. People have also looked for a court case. There is no question the North was right to specifically name Travellers because if this had not happened the ambiguity which exists in the South could have continued for years.

**Senator Ivana Bacik:** It is a very important practical point. I remember examining it before. It picks up on something in Dr. Mac Laughlin's paper on different phases of anti-Traveller racism. He points out that in the 1980s and 1990s legislation was introduced to tackle anti-Traveller racism. It strikes me this legislation named Travellers as a specific group and anti-Traveller discrimination is one of the nine grounds whereas ethnicity is a separate ground. At the time it was progressive legislation and Dr. Mac Laughlin marked this when tracking the development of the State's treatment of Travellers. It was also a fudge because ethnicity is one of the nine grounds of discrimination and would have encompassed anti-Traveller discrimination. As a practical point we must examine this. If the State were to recognise ethnicity of Travellers would we need this separate ground in the equal status and employment equality legislation?

**Senator Katherine Zappone:** How would the Senator name this separate ground?

**Senator Ivana Bacik:** At present there are nine grounds; ethnicity is one and Traveller status is a separate ground. I am interested in the views of the witnesses on this. Should it be retained as a separate ground? It is the jurisprudence we have developed.

**Senator Katherine Zappone:** The question is whether Traveller status should be retained as a separate ground.

**Senator Ivana Bacik:** Exactly. If we recognise ethnicity as a discriminatory ground it would encompass anti-Traveller discrimination, but at the time the State fudged it to avoid recognising Traveller ethnicity.

**Dr. Robbie McVeigh:** Going back further to the incitement of hatred legislation, it was included to ensure Travellers were not left out and there is no doubt the inclusion was progressive. My reading of it is that if the Government were to change the position and make it clear to CERD it was reporting to it with Travellers included as an ethnic group, the issue would fall because anyone who contested it in an ordinary court case would have to refer back to what the Government stated on ethnicity. If legislators want to be very safe, as they did in the North, they would use a clause similar to that in the Race Relations (Northern Ireland) Order 1997, which includes a definition of Travellers which Travellers are happy with and, by and large, everyone else including those concerned about the extension of protection to other groups also accept. It is a tight definition which works.

**Chairman:** I wish to make what is perhaps a controversial point. During our last meeting and today we have found out about a long shared history and a rich cultural tradition, common language and literature. We heard examples of these on the previous occasion and as Deputy Finian McGrath stated, we were all quite impressed with it. Speaking for myself, and perhaps some colleagues, I was ignorant of this. One of the witnesses stated if he had gone to the United States without having been accompanied by a Traveller he would not have gained access to the community there. There is a sense that settled people are excluded from this tradition and history. It might be useful for us to explore this further. What is in the common parlance is Travellers as troublesome people who steal things and get drunk. I was taken by a point in Dr. Mac Laughlin's submission with regard to demoralisation and despondency particularly among young male Travellers. I was also struck by the point on commercial nomadism being taken away and being left with a certain amount of deprivation. On the other side some Traveller traders are extremely well off. There are a number of contradictions and issues in the general mindset of people which need to be teased out and addressed. These perhaps lead to the fears which lead to the racism alluded to by Deputy Mac Lochlainn earlier. Will the witnesses comment on these points?

**Dr. Jim Mac Laughlin:** Many points have been raised. In the 1990s when I was working on this issue, journalists brought to my attention very forcefully that it is important to recognise that Travellers, just like any group, are not uniformly poor and do not all suffer from despondency. There is social stratification within the Traveller population. There are processes of exploitation of Travellers within the Traveller population and it is very important to recognise this and that we do not take a 19th century view that these are the innocent people in Irish society. This certainly is not the case. What was the other point?

**Chairman:** There is a general perception in some areas that "Travellers equal trouble" and that if a Traveller family moves next door, they will be the neighbours from hell. That is obviously not the case in many instances but it is the perception out there. It is a perception in many areas and it can lead to the kind of reaction to which Deputy Mac Lochlainn and others alluded. I know it is a controversial issue but we must speak about it because all of this links together. With regard to ignorance of the long history and cultural tradition, I would love to know more about those topics as they strike me as being rich and interesting, and some members of the committee may want to learn more about that at a later stage, as it seems fascinating.

**Dr. Jim Mac Laughlin:** I have two very brief points on that. Our ignorance is our own fault but I am arguing that in the context of the way the 19th century nation got to exclude not just



Travellers but the sons and daughters of the poor and the slum dwellers. A Nationalist discourse took a conscious decision to construct a nation in a particular way.

Another point worth making is that we are talking about ethnicity as if it has no link to place or economy. It is very clear that Travellers today, unlike those in the 19th century or even the 1940s or 1950s, have fewer economic roles in contemporary Ireland. That is unlike the past that we saw in rural Ireland, and my mother, who grew up in a rural environment, had clear memories of Traveller women coming into her house. My father remembered Traveller men coming through the area and working on the land, etc. We could see similar practices in places like Hungary, Romania and the Czech Republic, where gypsies have a clear function in society. Since the 1990s and particularly now, Travellers are suffering from an economic depression that is pulling their community asunder. We must recognise the economics of ethnicity.

**Chairman:** What is the answer if the traditional roles are gone?

**Dr. Robbie McVeigh:** There are two key points, with the first being commercial nomadism. The two most economically successful groups of Travellers I have seen are Rathkeale traders and Travellers in the United States. They are doing very well economically, although that does not mean other issues are not ongoing. The most striking thing about those in the United States was that the houses looked like something from Dallas. It is a simple way to describe them. The older Travellers we met thought it outrageous. Much money is being spent building massive houses but because these people are nomadic and on the road all the time, they are in the houses for about a month per year. There are internal dynamics in the community in that regard. Whatever stereotype people use about Travellers in the United States, it is not that they are poor, as they are very affluent. Commercial nomadism works for them and many of the Rathkeale families as well. The notion that it is over is not true and with other support, it might be developed.

At the same time, the Chairman is correct in suggesting that there are some categories of Travellers who will not be nomadic in the classical sense ever again. That does not stop them being Travellers and although nomadism is part of being a Traveller, it is not a definitive element. If anything Travellers without nomadism need much more support in integrating into the broader vision of multicultural Ireland which we spoke of earlier. It is fair to recognise that some Travellers are involved in anti-social activity at some points but so are some settled Irish people. I have heard arguments from Travellers in the North that there were no Travellers in the H-blocks on either side when the Troubles were ongoing. I do not think any Traveller can be held responsible for the economic crisis we are experiencing. Whereas individuals may sometimes behave negatively, that is true of all ethnic groups. Where people behave in such a way, the normal course of formal and informal legal sanctions take their place. It is no different for Travellers than for any other group.

I wanted to make a point earlier which is a nice way to begin to sum up. When asked about what we can do, there is a town some of us know very well in the North where the Tidy Towns competition is fetishised. It has always occurred to me that there is something striking in the absence of Travellers from the process. If somebody suggested there should be a halting site in the town, the first response would be that the town would never win the competition again. Politicians and others must start to rethink what this means, as a tidy town should have a proper provision for Travellers integrated into the community. At least for one year the competition might exclude towns without a proper provision for Travellers. At one level the town would be tidier if it did not have a halting site but we must rethink how we see Travellers and their place in society. It is an obvious way to do it.

## RECOGNITION OF TRAVELLER ETHNICITY: DISCUSSION

**Dr. Jim Mac Laughlin:** Architects may have opinions on the best and worst buildings. One of the reasons we see a persistent and virulent anti-Traveller opinion in Ireland is that we are becoming more tidy and commercial; we are not living in a society but rather an economy.

**Chairman:** I thank the witnesses for their attendance and their very valuable contributions to the committee. I thank them for their time and expertise. If they feel other issues may be helpful they can drop the clerk a line, and we would be delighted if they did so. I thank the members for their attendance.

The joint committee adjourned at 3.30 p.m. until 9.30 a.m. on Wednesday, 3 July 2013.

# DÁIL ÉIREANN

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**AN COMHCHOISTE UM DHLÍ AGUS CEART, COSAINT AGUS COMHIONANNAS**

**JOINT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY**

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*Dé Céadaoin, 13 Samhain 2013*

*Wednesday, 13 November 2013*

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The Joint Committee met at 2 p.m.

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MEMBERS PRESENT:

Deputy Niall Collins,	Senator Ivana Bacik,
Deputy Marcella Corcoran Kennedy,	Senator Denis O'Donovan.
Deputy Alan Farrell,	
Deputy Seán Kenny,	
Deputy Pádraig Mac Lochlainn,	
Deputy Finian McGrath,	
Deputy John Paul Phelan,	

DEPUTY DAVID STANTON IN THE CHAIR.



**EU Legislative Proposals: Discussion**

**Chairman:** Before we begin, I ask members and witnesses to turn off their mobile telephones, as they interfere with the sound system. Putting them on silent mode is not sufficient. Apologies have been received from Deputy Anne Ferris and Senator Katherine Zappone.

The purpose of the meeting is to consider two motions that have been laid before the Dáil and Seanad: COM (2013) 258, proposal for a Council decision on the conclusion of an agreement between Canada and the European Union on the transfer and processing of passenger name record data; and COM (2013) 259, proposal for a Council decision on the signature of an agreement between Canada and the European Union on the transfer and processing of passenger name record data. Briefing information has been circulated to members. I thank the Minister of State at the Department of Justice and Equality, Deputy Kathleen Lynch, and her officials for agreeing to assist us in our consideration of these matters. We will begin with an opening statement by the Minister of State, to be followed by a question and answer session. We look forward to the Minister of State enlightening us on these matters.

**Minister of State at the Department of Justice and Equality (Deputy Kathleen Lynch):** They are very simple proposals which I am sure will meet the approval of everybody.

**Chairman:** That is good to know.

**Deputy Kathleen Lynch:** I thank the Chairman for allocating time today to consider these two EU motions dealing with the proposed agreement between Canada and the EU on the transfer and processing of passenger name record, PNR, data. Two motions are required because the agreement itself is the subject of two separate proposals for Council decisions. This simply reflects the EU procedure for establishing such agreements, whereby the Council of Ministers and the European Parliament are co-legislators. It requires that the Council of Ministers must first adopt a decision to sign the agreement. The agreement is then sent to the European Parliament for its consent and, if that consent is given, the Council of Ministers subsequently adopts a decision to conclude the agreement.

The motions before the committee today are necessary to enable Ireland to participate in this measure. They propose that Ireland should exercise the option provided by Protocol 21 to the treaty on the functioning of the EU - that is to say, the Lisbon treaty - to participate in the adoption and application of an EU-Canada PNR agreement. The prior approval of both Houses of the Oireachtas is required, in accordance with the provisions of Article 29.4.7 of the Constitution, to enable Ireland to exercise that option. In line with the provisions of Protocol 21 to the Lisbon treaty, Ireland has three months to signal its participation in any given measure. In the case of this proposed agreement, the State must signal its participation by 26 November.

The Government has approved the proposal of the Minister for Justice and Equality that Ireland should take part in this measure. It is our view that measures such as these are to be welcomed and deserve our support. They can provide important support to police and law enforcement authorities in the fight against transnational serious crime and terrorism.

The proposal replaces the current EU-Canada PNR agreement which was concluded in 2005 and has been in operation since then. Following the entry into force of the Lisbon treaty, the European Parliament requested a renegotiation of this and the PNR agreements then in place with the United States and Australia. Members will be aware that revised agreements with those two countries have been established and put in place, and were considered by the commit-

tee under the same Protocol 21 in advance of Ireland's participation in them. Subsequent to the European Parliament's request for a renegotiation of the agreement with Canada, the Council of Ministers authorised the European Commission to conduct negotiations on behalf of the EU. It presented a draft agreement with Canada to the Council in May of this year. It is intended to seek approval to sign the proposed agreement at the meeting of the Council of Justice and Home Affairs Ministers in December. However, the deadline for opting into the agreement remains 26 November.

The proposed agreement provides that air carriers operating flights between the EU and Canada will provide to the Canada Border Services Agency certain PNR data for passengers flying to or from Canada. PNR data comprise information relating to passengers' travel reservations that is collected and held by air carriers as part of their reservations systems. The proposed agreement will require the airlines to continue to provide a portion of this information to the Canadian authorities for the purposes of combating terrorism and serious transnational crime. In practical terms, the proposed agreement will have no new or additional impacts for EU air carriers as the PNR data is already being provided under the 2005 agreement. However, unlike that agreement, the new proposal encompasses comprehensive data protection provisions and safeguards to be built in as part of the agreement itself. Under the 2005 agreement, on the other hand, data protection measures did not form part of the agreement. Rather, they were included as a set of commitments by the Canada Border Services Agency in regard to the application of the PNR agreement.

As I said, the proposed provisions represent an important tool in the fight against serious crime and terrorism. However, I am conscious of the need to ensure the rights of citizens are not subject to unnecessary or disproportionate intrusion, notwithstanding the importance of protecting both individuals and society against harm. It is essential to strike the right balance in measures such as these, especially with regard to privacy and the protection of personal data. Accordingly, the agreement contains a number of important and specifically tailored safeguards in respect of the use of PNR data. In particular, the purpose of processing the data is strictly limited to preventing, detecting, investigating and prosecuting terrorist offences and serious transnational crimes. We can all agree that detecting terrorists, people traffickers and other serious criminals is worthy of support.

Furthermore, the agreement sets out clearly a series of provisions relating to the arrangements for the handling and security of the PNR data and for data protection.

I draw particular attention to the provisions which establish that an individual will have the right to access his or her own data, to have incorrect data corrected and to seek judicial redress, including compensation, for any violation of his or her rights under the proposed agreement.

The retention period relating to PNR data will be limited to five years in total. However, it is important to note that this data will be depersonalised by the masking out of passenger names after an initial period of only 30 days. Furthermore, the full depersonalisation of the data, that is, the masking out of all other identifying information, will take place after two years. Compliance with these rules will be subject to independent oversight by the Privacy Commissioner of Canada - the equivalent of our Data Protection Commissioner - in addition to the Recourse Directorate of the Canada Border Services Agency.

There are additional controls included in the proposed agreement to deal with the processing of sensitive data, that is, personal data revealing race, ethnicity, religious beliefs, political opinion, etc. The processing of this data is limited to very exceptional cases and subject to strict

additional conditions and safeguards, including approval by the president of the Canada Border Services Agency and the deletion of the sensitive personal data after a maximum period of 15 days. The European Union is satisfied that the data protection provisions in force in Canada are sufficiently robust to protect EU citizens.

As stated, Ireland has until 26 November to decide whether to opt in to the adoption and application of the proposed agreement. This proposal is one of a number of measures being taken at EU level in the justice and home affairs field which arise from commitments set out in the 2009 Stockholm programme. The Government is determined that Ireland will have a full, active and constructive engagement in bringing forward the European justice agenda.

A number of countries, including the United Kingdom, the United States, Australia, Canada, Sweden and Spain, have been collecting PNR data for some years in order to help tackle transnational and serious crimes and terrorism. The use of PNR data has proved to be a very valuable tool in a range of investigations, particularly those targeting drug smugglers, human trafficking and terrorists. It is, as members will appreciate, difficult to provide details of the operational methods that police and law enforcement investigators might use, particularly when dealing with sensitive investigations. However, I will give the committee a flavour of the value of PNR in contributing to investigations. For example, the UK authorities targeted and successfully prosecuted a Chinese gang of people traffickers who had been bringing illegal immigrants into that jurisdiction and Ireland through other EU states. The use of PNR data was a key tool in the investigation in identifying the people who were being trafficked and linking them with the trafficking facilitators. I have no doubt that the committee will agree that human trafficking is a particularly reprehensible crime, a serious abuse of human rights and an affront to human dignity. It is often characterised as the modern equivalent of the slave trade. It is also often linked with the sexual exploitation of women. We should never tolerate human trafficking and must use all the tools and resources at our disposal to prevent and combat it, to protect the victims and prosecute the perpetrators.

PNR data were also used by investigators in the case of David Headley who was convicted for his involvement in the atrocious terrorist attacks in Mumbai, India, in November 2008, in which 164 innocent people lost their lives. By using details of the suspect's first name, his partial travel itinerary and a possible travel window and entering this intelligence into the PNR database, David Headley's full name, address and passport number were obtained. He was subsequently arrested and pleaded guilty to terrorism-related charges.

We can be in no doubt either about the pernicious nature of the international drugs trade. The supply and use of illegal drugs have a profound destructive impact on individuals' lives, as well as on entire communities. Drug trafficking is a highly lucrative internationalised crime that has a very local impact. As public representatives, we have all witnessed the impact of drugs in communities throughout the country. We must seek to ensure that those who are working to disrupt this criminal activity can take advantage of the relevant tools such as PNR to put the people involved out of business. Members will also be conscious of the potential value to police services of PNR data in contributing to the investigation of people who travel to overseas locations, often in the Far East, in order to have sex with under-age children. This is a particularly depraved form of "tourism" and we can be very sure the victims are not willing participants in what is an organised trade.

Given the potential law enforcement value of PNR data, particularly with regard to investigations into drug smuggling, human trafficking and international terrorism, the Government has no doubt that it is important that Ireland should opt-in in to the proposed agreement. Our

participation in the measure is also a clear demonstration of our continued support and solidarity with our EU and international partners in the fight against these transnational criminal activities.

I have great pleasure in commending the motions to the committee.

**Chairman:** I thank the Minister of State for her presentation which was fairly straightforward and easy to understand. Deputy Pádraig Mac Lochlainn is the first member indicating a desire to contribute.

**Deputy Pádraig Mac Lochlainn:** Every public representative will agree that we must support the policing and intelligence services in combating serious criminality of the type outlined by the Minister of State. She has also highlighted the need to balance the rights of citizens in order to ensure we assist in the ongoing war against serious criminality. Said criminality does not recognise borders, particularly in the context of its impact on victims. In the context of human and civil rights, is the Minister of State satisfied with what is contained in the agreement? It appears that the original agreement will be strengthened by the new version. Is the Minister of State satisfied with the protections provided for citizens. In the past the European Commission's legal service had concerns about the categories of offences on which information was required to be given. For example, a person who might have been convicted of an offence which was not that serious could have had his or her details passed on. Will the Minister of State clarify the position on the types of offences involved?

I am also seeking reassurance on data protection issues, particularly in the context of the information revealed by Edward Snowden during the past year. Of course, the policing and intelligence services should be given what they need in order to combat crime, but we must also ensure they do not have too much power and that a Big Brother-type scenario is not created. Will the Minister of State provide reassurance on the position in this regard.

**Deputy Kathleen Lynch:** We all share the Deputy's concerns and there is certainly a need to ensure a proper balance is struck. However, we must also consider how we can combat human trafficking and the drugs trade. People who are trafficked often do not know the language spoken in the country to which they have been brought; they can be extremely scared and their documentation will have been taken from them. It is difficult to obtain a fix on how to combat serious crime, but the agreement will prove to be a major tool in that regard because the relevant experts will be able to use it to monitor the continual comings and goings of individuals and groups. We will never be able to completely eliminate serious crime, but the agreement will increase our chances of detecting it.

Let us ignore what happened during the past year and concentrate on that which has occurred in recent days in the context of people's personal information being stolen by those who are clearly not going to use it for any legitimate purpose. It is welcome that the European Union has decided to renegotiate this agreement in order to ensure it will be more robust, which is extremely important.

The fact that people will be able to access the relevant information themselves is also very important, as is the fact that a data protection officer in the country in which the information is being stored will have responsibility for ensuring it is kept safe. The only remit of data protection officers in any jurisdiction is to ensure data relating to individuals are both protected and used for the correct purpose. I am completely assured of that. It is a good thing that we are coming back to this issue today and that we are building a regime of data protection. The

world has changed in that in 2005 I am not certain that we were as conscious of breaches of data protection as we are now, but we are very conscious of them now. The robust mechanisms that have been built into this agreement will serve us well. However, I share the Deputy's concerns. We always need to be conscious that the details of an individual that are on the system for legitimate purposes could find their way into a space where they not should be. The fact that individuals will have access to their records and there is a provision built into the system that, in the event that something should happen, they will have a recourse to action should give us some degree of comfort.

**Chairman:** Deputy Finian McGrath indicated that he wanted to contribute.

**Deputy Finian McGrath:** I welcome the Minister of State to the committee. I share her view on value of the system of investigations into violent activity, criminal activity, drugs crimes, human trafficking and the exploitation of under-aged children. However, I have a concern about an issue, which has arisen again recently, namely, the trust between the security services in different countries. I saw a programme on BBC1 last night which showed that the PSNI had a major lack of trust and confidence in the intelligence service in the North. That is in a divided community where they are trying build to trust in the relationship between the police force and the local community, and the Nationalist community in particular. I have a concern about elements of security services in Europe and other countries having PNR data, and many people share that concern.

I do not know if the Minister of State is familiar with Anne Cadwallader's book, *Lethal Allies*, which deals with the issue of collusion, an issue the joint committee covered at the time of the investigation into the Dublin and Monaghan bombings. There was an issue of trust and confidence involved there. The reason I raise this issue is that there are elements within the security forces about which many of us have concerns; their track record in terms of people's rights has let us down. Does the Minister of State have those concerns? She hinted at this when she said that when one has this type of information, it must be treated respectfully and there can be no violation of human rights. The reality is that some people have major concerns about some of the data in respect of individuals that is being shared. There is a lack of confidence and trust in certain aspects of security services.

**Deputy Kathleen Lynch:** It is always healthy to be a little sceptical of State agencies when they have the capacity to deprive one of one's liberty. It is good for all of us to have that approach and we should question matters. The BBC programme to which the Deputy referred was about a time when things were very different. I was here for the inquiry into the Dublin and Monaghan bombings. Anyone who sat at the table and looked at the pieces we saw was very clear that we were living in an entirely different space. In terms of transnational crimes, terrorism, drug trafficking, human trafficking and all such crimes, when one is negotiating an agreement with other countries, the only thing one can do is ensure that what is in that agreement is robust and one must then assume that the country which it is with will follow the law in their own land. I believe we can be assured of that. If that does happen, as I have said it to Deputy MacLochlainn, there are various of mechanisms in place to ensure people have access to their records and that they have a means of redress.

**Deputy Seán Kenny:** This agreement is purely between the EU and Canada only. It does not refer to any other country. Under this agreement the airlines will have to pass on passengers' names and details to the Canadian border authorities. I went to Canada about 15 years ago and the Canadian mounted police were at the airport when I arrived in Toronto. I never got as thorough a check in my life as I did then. They told me that my passport photograph was

not a good likeness and that I had deteriorated since the time it had been taken. The Canadian authorities are quite thorough in their checks. Is there a particular reason that it is only Canada that is doing this?

**Deputy Kathleen Lynch:** No, it is doing that already. This is not something new. This agreement has been in place since 2005 but we are now building in a more robust mechanism to protect people's data. We have an agreement with Spain, Australia and the USA and the EU is negotiating agreements with different countries. This one, which we have to opt into by 26 November, is with Canada, but this is not about our relationship with Canada in isolation. It is about the EU's relationship with other countries.

**Deputy Marcella Corcoran Kennedy:** I thank the Minister of State and her officials for attending. I do not believe anyone could argue with the intention of the motions. We would all agree that the type of information sharing is critical for law enforcement across borders. How easy would it be for people to examine the data that is on system and to check whether it is correct or incorrect? How user friendly will it be for the citizen to establish who has data and what are the data? If there is anything wrong with their details, how would a person go about getting them changed? It should be user friendly to ensure that people do not have to deal with a weight of bureaucracy to obtain their rights.

**Deputy Kathleen Lynch:** I am just checking that for the Deputy. It will be on the printed material one normally completes on these flights. The provision states that candidates shall ensure that any individual may access the PNR data. I assume that the only way they can ensure that is by informing the person by way of written documentation. It states that candidates shall ensure that a compliance authority, within a reasonable time, shall provide the individual with a copy of their PNR data and if the individual makes a written request for their PNR data, there will be a reply in writing to any request. It further states that Canada shall ensure that the Canadian compliance authority makes the following available on its website: a list of the legislation authorising the collection of PNR data; the reason for the collection of the PNR data; the manner of protecting the PNR data; and the manner and extent to which the data may be disclosed. There is a website, and there is also information on the transit cards we all complete from time to time. It will be made clear where that can be accessed but if the request is made, the data must be supplied to the individual and if it is incorrect, it is the data protection officer in charge of that particular section who will alter the information online if the individual requests it.

The protections in terms of depersonalising the information are very important. There may be other issues connected to groups travelling and so on but they may not concern the individual on whom they have the data but it is important that this can be dealt with separately.

**Chairman:** What exactly is included in the passenger name record, PNR, data in these instances?

**Deputy Kathleen Lynch:** I should have included that in my contribution. It includes a PNR locator code, date of reservation-issue of ticket - it is a code with which everyone is issued - dates of intended travel, name, and available frequent flier and benefits information. If someone is on the frequent flier list, one's name could end up on this. It also includes numbers of travellers, and I spoke earlier in terms of a group of people. It includes all available contact information, including originator information; all available payment billing information not included; other transaction details linked to a credit card or account and not connected to the travel transaction; travel itinerary for specific passenger name record, PNR; travel agency code share information - again, all of those details are numbered; split or divided information; travel

## MESSAGES TO DÁIL AND SEANAD

status of passenger, including confirmation and check-in status; ticketing information, including ticket number, one-way tickets, automated ticket fare quote, all baggage information; seat information, including seat number; general remarks including other supplementary information, OSI, special services information, SSI, and special service request, SSR, information; any advance passenger information, API, data collected for reservation purposes; and all historical changes to PNR data listed in numbers.

Any of us who have done this know that it is not always necessary that the airline would collect all of this information. It is only the information that the airline collects. We do not expect that the airline would be obliged to collect all of the information outlined. Usually, it is a case of name, address, postal code if one has one and country of birth. In some countries the information might be requested internally more than externally. The information available will simply be what the airline collects as a matter of course.

**Chairman:** Airlines collect a lot of information. We have seen recent reports of serious data protection breaches. We all know what I am talking about in that regard. In the case of a data protection breach in this context, are there mechanisms in place so that citizens can be informed or forewarned? What are they? How will someone be told if there is a data protection breach?

**Deputy Kathleen Lynch:** I can only speak from personal experience. I have never been asked for a credit card number on a transit card. Such information is not usually collected which is a protection in itself. If there is a breach then it is incumbent on the holders of the information to inform people. That said, there is a depersonalisation after 30 days and all of the sensitive information which it might have been considered necessary to keep is gone after two years and all of the information is gone after five years. Such a flushing out of the system will probably ensure that there would not be a great deal of information held at any one time. It is incumbent on the holders to inform people where the information is still held.

**Chairman:** If all members are satisfied with that, I thank the Minister of State. We have now completed our consideration of the motion. I thank the Minister of State and her officials for their attendance before the committee today.

**Deputy Kathleen Lynch:** Thank you, Chairman.

## Messages to Dáil and Seanad

**Chairman:** In accordance with Standing Order 87, the following message will be sent to the Dáil:

The Joint Committee on Justice, Defence and Equality has completed its consideration of the following motion:

That Dáil Éireann approves the exercise by the State of the option or discretion under Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, to take part in the adoption and application of the following proposed measure:

Proposal for a Council Decision on the conclusion of the Agreement between Canada and the European Union on the transfer and processing of Passenger Name

JOINT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY

Record data,

a copy of which was laid before Dáil Éireann on 6 August 2013.

The Joint Committee on Justice, Defence and Equality has completed its consideration of the following motion:

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Proposal for a Council Decision on the signature of the Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data,

a copy of which was laid before Dáil Éireann on 6 August 2013.

In accordance with Standing Order 72 the following message will be sent to the Seanad:

The Joint Committee on Justice, Defence and Equality has completed its consideration of the following motion:

That Seanad Éireann approves the exercise by the State of the option or discretion under Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, to take part in the adoption and application of the following proposed measure:

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a copy of which was laid before Seanad Éireann on 6 August 2013.

*Sitting suspended at 2.34 p.m. and resumed at 2.37 p.m.*



**Recognition of Traveller Ethnicity: Discussion**

**Chairman:** The next part of this meeting is an engagement with representatives of the Irish Human Rights Commission and the Equality Authority on recognition of Traveller ethnicity. Briefings have been circulated to members. On behalf of the committee, I welcome Ms Sinéad Lucey from the Irish Human Rights Commission and Mr. Laurence Bond from the Equality Authority. The format of the meeting will be for both witnesses to make an opening statement and then we will have questions from members. I remind everybody to make sure their mobile telephones are switched off because they interfere with the sound system.

Witnesses are protected by absolute privilege in respect of their evidence to this committee. However, if they are directed by the committee to cease giving evidence in relation to a particular matter and continue to so do, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise nor make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

Members are reminded that under the salient rulings of the Chair they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. I invite Ms Lucey to make her presentation.

**Ms Sinéad Lucey:** The commission appreciates the opportunity to make a presentation to the committee today. Since its establishment, the commission has consistently expressed its concern regarding the human rights of the Irish Traveller community. This concern has been reflected at various levels of the commission's work. It was in the context of the State's first examination under the International Convention on the Elimination of All Forms of Racial Discrimination, CERD, in 2004 that the commission undertook a detailed consideration of the question of Traveller ethnicity. That was in response to the State's assertion at that time that Travellers did not constitute an ethnic minority in the State. A discussion paper was published which was a legal analysis of the recognition of Travellers as an ethnic minority measured against international human rights standards, relevant case law and legislation. At that point the commission predicted that the CERD committee would regard Travellers as an ethnic minority when the State's report was examined. The commission was correct in its prediction and the CERD committee has made two recommendations, in 2005 and again in 2011, urging the State to work more concretely towards recognising the Traveller community as an ethnic minority. In addition, the UN Human Rights Committee, in considering the State's compliance with the International Covenant on Civil and Political Rights, also made the same observation in 2008 and expressed concern regarding the State's approach to the matter. It is notable that the UN Human Rights Committee has issued further questions to the State on its work towards the recognition of Traveller ethnicity.

At Council of Europe level, the Advisory Committee on the Framework Convention for the Protection of National Minorities expressed its concern in 2006 regarding the outright rejection by the State of Traveller ethnicity. The advisory committee, in its most recent opinion on Ireland published in April this year, welcomed the fact that the Government was now demonstrating a more open approach to the question of Traveller ethnicity and recommended that the State finalised its consideration of the proposed recognition of Travellers as an ethnic minority so that they could access all applicable international and domestic non-discrimination rights. As for standards, in January 2013 the Irish Human Rights Commission published its most

recent consideration on the question of recognition of Traveller ethnicity. The commission's submission to the Government welcomed the more open response of the State to the question. However, the commission also expressed concern that the State had shifted its position from outright denial of ethnicity to one which focused on what may prove to be a wholly-elusive consensus among the Traveller community and Traveller representative organisations as a possible prerequisite to recognition.

The commission's submission explores this position in detail and submits that the principle of self-identification as protected under the International Convention on the Elimination of all Forms of Racial Discrimination, CERD, and indeed similarly enshrined in the framework convention, was being misunderstood by the State and that a universal form of self-identification as an ethnic group is not a necessary prerequisite for recognition of an ethnic minority by the State for the purpose of ensuring legal protection of that group. We pointed out that the Human Rights Committee is clear that the existence of an ethnic minority in a State requires to be established by objective criteria. This is nothing to do with opinion or consensus. The principle of self-identification presupposes the existence of an ethnic minority but affords protection to each individual within that group from being coerced in any way to so identify. One can think of many reasons from history as to the reason such protection is considered necessary for vulnerable minorities.

As to the question of whether the State should recognise Traveller ethnicity, the commission would submit that Traveller ethnicity essentially is a legal reality by which the State is bound, irrespective of any formal act of recognition. Regardless of whether the State chooses to so recognise Travellers, it will in no way prevent the international bodies identified in our submission from continuing to recognise Travellers as an ethnic minority and to hold the State to account for their treatment in that light. By its denial, the State puts itself in the anomalous situation of denying ethnicity but not being able to deny the protections that flow from that status. We point out that the State has never itself put forward cogent reasons as to why it considers that Travellers do not satisfy the necessary criteria for recognition as an ethnic minority. More positively, the commission sets out in its submission the reasons recognition of Traveller ethnicity will be of benefit to the Traveller community itself and to the State and society in general. We also pose the question as to how the State should recognise the ethnicity of Travellers and observe the modalities for recognition of ethnicity are not set out in any international instrument or opinion and so there is no defined process in this regard. In our written statement, we suggest a possible statement on the record of Dáil Éireann, which then is reflected in the State's international reporting and is carried through into domestic law and policy.

In conclusion, the commission is presently anticipating its merger with its sister organisation, the Equality Authority, and it is appropriate that representatives of both organisations are sitting here side by side today. We understand that new legislation is imminent and may confer on the new Irish human rights and equality commission a wider remit, including in respect of encouraging intercultural understanding, promoting tolerance and acceptance of diversity in the State. At this juncture the commission respectfully urges the State itself to lead by example in this regard by finally recognising Traveller ethnicity.

**Chairman:** I thank Ms Lucey and invite Mr. Bond to make his submission.

**Mr. Laurence Bond:** On behalf of the Equality Authority, I thank the joint committee for its invitation to make a presentation today. It is the view of the authority that recognition of Traveller ethnicity is central to effective promotion of equality for members of the Traveller community. Such recognition has significant practical implications. International agreements and EU

legislation will not name specific ethnic groups from particular states within their provisions on ethnicity. Therefore, Traveller ethnicity needs to be recognised by Ireland to ensure Travellers can fully enjoy the protections and benefits that flow from these agreements and legislation alongside other ethnic groups. In addition, Traveller ethnicity is a key factor that must be taken into account in identifying and responding to the needs of the Traveller community. Furthermore, equality is not only concerned with access to resources or decision-making, important as they are, but must involve access to recognition, status and standing in society. The recognition of Traveller ethnicity is in our view central to achieving equality of status or standing for the Traveller community and would provide a strong foundation for building new relationships of respect and solidarity between the Traveller and settled communities. Our submission to the Committee consists of a detailed consideration of the issue of Traveller ethnicity, which the authority published in 2006. Prior to this, as we have just heard, the Irish Human Rights Commission had already published an in-depth consideration of the question of the recognition of Travellers as an ethnic group from a legal perspective, which the Equality Authority endorsed. Our report, therefore, has a different focus.

It provides an overview of the evolution of public policy thinking on Travellers' identity as a group in Irish society, drawing on the three major official reports on Travellers and related material, relevant Dáil debates and various statements of Government policy. What this overview shows is that official policy thinking has in fact moved to a position of strongly affirming the distinct culture and identity of Travellers as an indigenous minority within Irish society. There is indeed general consensus on this matter. It further shows that what this has actually meant is that in many ways, Traveller ethnicity has de facto been acknowledged. For example, I refer to the decision in the Equal Status Act 2000 to incorporate in equality legislation a definition of the Traveller community that was explicitly modelled on the Northern Ireland Race Relations Order 1996. Not surprisingly the incorporation of this definition in the legislation at the time was generally interpreted as confirming legislative recognition of Travellers as an ethnic group. However, if on the one hand it appeared as though Traveller ethnicity was being acknowledged, on the other it was being denied and specifically in the context of Ireland's engagement with the international human rights system. In the light of the positive shifts in official thinking that were evident, the position then taken by Ireland when reporting to CERD, in explicitly denying that Travellers should be recognised as an ethnic group in the international human rights context, was surprising to say the least. The basis for this denial was far from clear but at least in part was based on a claim that the argument that Travellers are an ethnic group was "controversial within academic research". Our report, therefore, specifically addressed this issue through a detailed analysis of the principal academic literature on Travellers' ethnicity. This demonstrates that in fact, academic work overwhelmingly supports the recognition of Travellers as an ethnic group.

In conclusion, the Equality Authority believes that the case in support of recognising Traveller ethnicity is comprehensive and compelling. It is recommended that the Government should now recognise Travellers as an ethnic group and that this recognition should be reflected in all policies, programmes and institutional practices that affect the Traveller community.

**Deputy Pádraig Mac Lochlainn:** I thank both witnesses for their presentations, which will be of considerable assistance in the compilation of the report the joint committee will draw up shortly with recommendations for the Government. The position of both bodies is clear and has been on the public record in the past. However, I now wish to go through some of the implications of what appears to be ongoing ethnicity denial within this State. As was pointed out in the presentations, in England, Wales and Scotland, on foot of a court decision, the ethnicity of the

Irish Traveller community essentially has been recognised. Through the equality legislation in Northern Ireland, there clearly is a definition of Irish Travellers as an ethnic minority. Are there are legal implications for the State because the Government has refused to recognise ethnicity? Are there possible legal implications for the State at a European level in the future if it persists in sustaining this position? I am mindful the witnesses are not attending as legal experts but I seek their thoughts on this point.

**Chairman:** Can I stop the Deputy there to get an answer to this very interesting question? We can then return to further questioning. Are there particular reasons, legal or otherwise, in respect of European regulations or whatever, that directives for this cannot happen? What are the implications if it can?

**Ms Sinéad Lucey:** The Commission's view on this would be that most protections from discrimination in terms of the Committee for the Elimination of Racial Discrimination, CERD, are linked to ethnicity. Therefore, if one does not recognise Travellers as an ethnic group, one does not recognise that they are automatically entitled to the protections under CERD, the framework convention or any similar instruments. In that regard, the State has been saying that it confers the same protection on Travellers anyway and, therefore, it does not make a difference. However, it actually makes a significant difference in terms of how the State brings back what those committees are saying to it, how it discusses those issues with Travellers and how it seeks to resolve them. If the State is having a dual relationship, stating at an international level it is affording them those protections but at a domestic level stating they are not entitled to those protections, that must have legal implications in terms of recognition of ethnicity.

More specifically, a more obvious example that has been raised quite consistently is that under EU law, protection from discrimination for minorities is based on race and ethnicity. It is far from clear whether Travellers can automatically rely on those protections, and that could come up in the context of domestic proceedings before the Equality Tribunal if a question arises regarding the interpretation of the EU race directive. If it happens in the context of a case that is based on a race ground, there is no question that directive will apply but if it happens in a case of somebody claiming discrimination on the Traveller ground, it is far from clear whether the directive applies, and that merely creates an anomalous situation for Travellers.

**Chairman:** The question was whether there is any reason it cannot happen. Is there a legal reason or are there other implications? Why is the State not going along with the recommendation of the Irish Human Rights Commission? I think that is the gist of Deputy Mac Lochlainn's question.

**Deputy Pádraig Mac Lochlainn:** I will clarify. I appreciate every state has its own laws and framework, but the English, Welsh and Scottish law clearly recognises, following a court decision, that the Irish Traveller community is an ethnic community within that jurisdiction. They have made a legal judgment and it has been published. Would Ms Lucey see that as also applying to Ireland, if we looked at it in the same way? Are there legal implications for the State that it is not fulfilling its international obligations?

I have looked through the judgment but I have not had a chance in the past 24 hours to go back over it in advance of the meeting today. One presumes the judge or judges who made that decision were mindful of the international obligations of England, Scotland and Wales as jurisdictions and that they made the decision based on the evidence presented to them. Is the Government exposing us to legal consequences because of its ongoing denial of ethnicity? This position of the Irish Human Rights Commission and the Equality Authority is not new.

They have had this position for a number of years. They have given detailed evidence-based submissions and the denial is ongoing. Could there be legal implications for the State, such as challenges, because of this?

**Ms Sinéad Lucey:** The legal implications happen at an international and a domestic level. There are quite different consequences, depending on the context. The legal implications at an international level are being played out in the sense that we are being increasingly criticised by expert international bodies for not taking the step of recognising Traveller ethnicity. Those observations are on the record and they do not do the State credit at this stage.

At a domestic level, it depends on the type of case that arises and the exposure. Ethnicity has arisen in the context of domestic proceedings, and while in general they have not gone to a full court hearing, there are certainly implications for the State. It would be difficult to imagine a situation where the United Kingdom precedent would not be followed in Ireland. The same evidence would be adduced before the court, and the same experts and the same arguments. It would be almost impossible for the State to defend its position in that regard, and undesirable to be doing so as well.

**Deputy Pádraig Mac Lochlainn:** I thank Ms Lucey. There are a couple of other questions.

**Chairman:** Of course.

**Deputy Pádraig Mac Lochlainn:** I do not mean to hog the meeting.

**Chairman:** Not at all. It is fine.

**Deputy Pádraig Mac Lochlainn:** Ms Lucey dealt with the issue of this requirement for consensus among the Traveller community. That goes against the principle of self-identification. It is internationally recognised. That is dealt with.

Perhaps Ms Lucey would elaborate on this matter she touched on in her earlier comments and in her response initially to my first question. In terms of the international human rights treaties, what are the implications for the Traveller community of ethnicity denial and what protections under those treaties are being denied that would change if ethnicity were granted? That is my final question.

**Ms Sinéad Lucey:** In terms of the implications for the Traveller community, I am happy to have had an opportunity to read the transcripts. Traveller organisations and Traveller representatives have set out some of the implications they perceive and it is difficult to expand further than that. It is the fact that the State is patently in breach of its international obligations. It is the way that, first, Traveller ethnicity has become something of a distraction and these committees are taken up with considering issues around ethnicity that should not arise when they should be focusing on the issues Travellers experience.

Second, many of the recommendations of the committees tend to be linked to the ethnicity question and if the State continues to deny ethnicity, there is no need for the State to consider issues around nomadism. There are implications beyond that.

**Senator Ivana Bacik:** I thank the witnesses for the helpful presentations. Many of us hold a strong view on this issue of ethnicity, and Deputy Mac Lochlainn's questions go to the heart of the ongoing impact of denial of ethnicity.

I am interested in focusing on an aspect of the presentation about the process of recogni-

tion. If the committee is to recommend recognition of ethnicity, how does the Government go about implementing that? I note the suggestion that it may not require legislation. Perhaps I, as a lawyer, have been prejudiced and assumed legislation would be required, but I note the witnesses point out, rightly, that a statement of recognition could be made in the Dáil and Seanad and the State, at an international level, could affirm ethnicity without necessitating legislation, although the witnesses state it would be useful. Could Ms Lucey elaborate on that? Would it be enough to make that sort of statement and to take that position as a State without explicitly setting it out in statutory format?

**Ms Sinéad Lucey:** From the point of view of the international community and the international bodies, what they want to receive from the State are reports stating it accepts Travellers are an ethnic minority, these are the issues that arise and these are how we are addressing them. They will not be overly concerned about whether we have that in legislation unless there is a specific implication where Travellers are not able to access the range of protections against discrimination available to any other ethnic group. It is only if it had a practical implication that they would become particularly concerned. If it does not, I am sure they would be satisfied with a statement that cannot later be resiled from. If it were on the record of the Dáil, it would be difficult for the State or the Government, having stated that in the Dáil, to argue in any other context on a legal point that Travellers are not an ethnic group. A statement in the Dáil would be a positive first step.

It is interesting that the international bodies have spoken less about recognising Travellers as an ethnic group and more about taking steps to recognise or moving in a concrete way towards recognition. I would interpret that as meaning a series of engagements with the Traveller community to identify and discuss the issues in a meaningful way. It would involve asking how have we not recognised Traveller ethnicity and what elements of our law and policy do not validate Traveller culture and way of life. It is also a matter of asking how we do not support Travellers in education and whether we do not recognise Traveller history in education. We must ask whether there are barriers to nomadism or certain laws that are inimical to nomadism that have suppressed the practice of travelling? The first step is a formal one that might include making a formal statement. It could be legislation but it could be just a statement in the Dáil. A process must flow from that. It should not be a case of making a statement of recognition and doing nothing further. There should be a meaningful process thereafter.

**Senator Ivana Bacik:** The way proposed is certainly an easier approach. As Ms Lucey said, Traveller status is recognised in anti-discrimination and equality legislation, including unfair dismissal law. Seeking a statement could be desirable at first, and then one could engage in a process of examining other forms of discrimination. This seems easier than beginning with legislation.

**Ms Sinéad Lucey:** It would have considerable symbolic significance for the Traveller community. In this regard, I defer to the others present. The statement of the Taoiseach on the Magdalen laundries is noteworthy. This is an emotional matter associated with esteem and such issues. The symbolic effect of a statement would be very powerful.

**Mr. Laurence Bond:** I wish to add to that. It is undoubtedly the case that Ireland, in its presentations to international human rights bodies, accepts and recognises characteristics of the Traveller community, such as its history, different cultural identity and its experience of discrimination, that in themselves are sufficient criteria for recognition as an ethnic group. One of the difficulties associated with this issue and which probably causes some confusion internationally is our position that although we acknowledge and affirm in our reports all the character-

istics that are taken in jurisprudence and anthropology as the characteristics that define a group as an ethnic group, and although we affirm these characteristics' importance and significance in determining how one thinks about policy on Travellers, we do not recognise Travellers as an ethnic group. It causes significant confusion simply because it begs the questions as to what exactly is required and what missing criteria are not being fulfilled.

A factor we addressed in our report was the suggestion that there is some academic reason for failing to grant recognition. We found this did not hold. A further issue that may have arisen is the idea that there must be universal consensus. This does not hold either. I have come across a suggestion that it is not so much an issue of principle but that there is a risk of significant costs. I cannot see where they come from.

In many ways, we have acknowledged Traveller ethnicity. With regard to the specific provision in the equal status legislation, there was a specific discussion on adopting a form of description or definition of the Traveller community that recognised its ethnicity. Having done so, we have done much of what is required. The Government has affirmed that. It seems to be counter-productive to achieve all this while holding back on actual recognition, especially with regard to respect and recognition of a people for who they are. With that in mind, it is undoubtedly the case that the approach suggested by my colleague, that is, to have clear political recognition at Government level in the first instance followed by reporting to international bodies, is a clear first step. The issue then arises in practice as to whether something further is required whereby particular issues may be identified. One would have the option at that stage of examining the potential for amendments to our equality legislation or other legislation. If one were to have political recognition and carry this over to the reporting to international bodies, it could be that one would have done most of what needs to be done. One could then deal with whatever additional formal recognition is required as particular issues are identified.

**Chairman:** I have a couple of questions for my benefit. I am learning a lot. We have debated this issue before. I recognise the presence in the Public Gallery of some witnesses who were present on the previous day. I compliment Deputy Mac Lochlainn on the work he is doing in this area. We spoke on the last day about Traveller history, education, music and culture. We spoke about a potential visit to educate us on the tradition, culture and richness that exists. Deputy Naughten is going to work on this for us at some stage in the near future.

Ms Lucey's document refers to objective criteria and self-identification. It also refers to shared history, culture, way of life, the practice of nomadism, etc. I apologise if I am being a little crude but I seek clarification. Are we talking about what is almost a box-ticking exercise? Many Traveller families are not travelling anymore and do not practice nomadism. If they do not, does that mean they are not part of an ethnic group, for instance? Have we a set of criteria that must be fulfilled before somebody is recognised as part of an ethnic group? Could one be half in and half out? I apologise if I am being extremely crude. How does one know whether one is part of an ethnic group, including the one in question? Perhaps Ms Lucey could tease that out for us.

**Ms Sinéad Lucey:** The principle of self-identification is quite separate from the question of how one recognises an ethnic group. The main point of our submission was to argue that they are different. With regard to ethnicity, it was stated at a meeting of this committee in the past that various legal tests have been set down in UK case law, most famously in the case *Mandla v. Dowell-Lee*. It establishes the legal test that has been set out in terms of the criteria. Certain criteria are essential and others are optional. Irish Travellers have been found to fulfil the necessary criteria and also certain of the optional criteria. In strict legal terms, it is an objective test

as to whether an ethnic minority exists in the state.

Self-identification, as the commission understands it, is in essence a protection that has been put in place for ethnic minorities for reasons related to historical events in which ethnic minorities were targeted in a particular way. There are examples in the Irish context where Travellers were segregated in services. This was because the principle of self-identification was not properly applied to them. It would allow them to say they are not subscribing to a particular service in a particular way just because they are Travellers. They could say they do not have to identify in a particular way to gain access to the service available to the community in general.

It is probably more appropriate for Traveller organisations to address the question as to whether somebody is half in or half out. There have been discussions on Travellers who may conceal their identity in certain contexts for reasons associated with negativity and the perception of Travellers in society, but I do not believe I could elaborate on it much more than the Traveller representatives have done.

**Deputy Niall Collins:** I apologise as I had to leave for a few minutes, resulting in my missing some of the contributions. I read the opening submissions. What does the conferring of ethnic status on the Traveller community mean in layman's terms for Travellers or society in general?

**Mr. Laurence Bond:** My colleague has outlined the modalities of how that would happen. In terms of the practical implications, I would see the starting point as recognising people for who they are and affirming that. A key starting point in the history of public policy thinking about Travellers was in the 1960s when the Commission on Itinerancy published its report, 50 years ago this year. This was the first time the State had tried to collectively reflect on the position of Travellers in Irish society. I quoted some of that in our main report and it is well known that there was a specific suggestion that it was essential not to recognise Travellers for who they were. The report said it would call them itinerants even though they refer to themselves as Travellers and want to be referred to as Travellers. That was partly related to saying it was important not to recognise Travellers but rather to insist that they be absorbed into the general community and become like us.

The core message of that report was that Travellers are a problem, and that problem is solved by absorbing them into the community. The whole argument about recognition of ethnicity is fundamentally related to that. This debate has been going on since the 1970s. Not long after that report was published, many Travellers were saying this is not just about absorption into the community. They said Travellers have a history, culture and identity and recognising who they are is core to treating them equally and on a basis of mutual respect between Travellers and the settled community. Public policy has moved a certain way along that road but, clearly, has found it difficult to take the final step in terms of that recognition.

One can think of many parallels. The current argument about access to marriage for gay people is partly about saying one recognises people as not different or a lesser but as of equal value. One recognises that by recognising people for who they are, not insisting they be like oneself. That is our fundamental starting point for the significance of recognition of ethnicity. If one takes that as factor at a symbolic and personal level, it clearly has implications for public policy. If one is to take that seriously and apply it to issues such as development of housing and education policy, one thinks about what this means for how one teaches about Traveller children, teachers Traveller children, how Travellers are engaged in the classroom, etc. We do a lot about Traveller education and housing, but it is about doing them better by taking this into



account.

**Chairman:** On a matter that Mr. Bond raised earlier and about which Deputy Collins may have asked, Mr. Bond implied he was not sure whether there would be a significant cost to the State as a result of this proposed recognition of ethnicity. Has he any points to make on that?

**Mr. Laurence Bond:** I have heard it suggested that to recognise ethnicity would expose the State to significant additional costs above what is already spent on Traveller policy, which is significant. I can clearly see how recognition of ethnicity may have implications for rethinking how some of the money we currently spend is used, what is prioritised and what is not. However I have tried to think about what significant additional costs there could be and I cannot see what they would be.

**Chairman:** Is everybody happy? I thank the delegates for taking part in this process and for their very useful contribution.

The joint committee went into private session at 3.15 p.m. and adjourned at 3.40 p.m. *sine die*.



February 2013

2013/073 (2)

## **Submission to the Joint Oireachtas Committee on Justice, Equality and Defence**

**on**

## **Recognition of Traveller Ethnicity**

### **Recommendation**

The Irish State should formally recognise Travellers as an ethnic group for the purpose of international and domestic human rights protections, providing legal clarity in particular to international legal covenants and in response to the long standing request by Travellers, National Traveller organisations, International and domestic human rights bodies.

## **Executive summary**

### **The imperative of recognition and the Traveller community position**

1. Travellers satisfy the standard legal and sociological criteria for recognition as an ethnic group.
2. The British and Northern Irish authorities have recognised Travellers as an ethnic group, separate from non-Traveller Irish people.
3. The principle of self-identification in international human rights law prescribes that a State must recognise members of an ethnic group if they self-identify as such. The burden of proof in refusing to recognise a group self-identifying as an ethnic group rests with the State.
4. International human rights bodies have consistently reminded the Irish State of the application of the principle of self-identification in addressing the campaigns of Irish Travellers to have their ethnicity recognised. The rights referred to by the said human rights bodies are set out in international human rights treaties ratified by the Irish Government. The Irish Government has **never** satisfied the burden of proof in its failure to recognise Travellers self – identifying as an ethnic group.
5. Lack of current and future domestic and international protection undermines Travellers' rightful place in wider society and perpetuates their status as the most marginalised people in Irish society – recognition of Traveller ethnicity is at the heart of how Travellers might become less unequal
6. The failure of the Irish Government to recognise Traveller ethnicity is contrary to the terms of the Good Friday Agreement in which the Irish Republic agreed to equivalent human rights protections North and South of the border. The fact that a Traveller in Newry is a member of an ethnic group and a Traveller in Dundalk is not clearly flies in the face of the terms of the Good Friday Agreement.
7. Acknowledgement of ethnicity by the Irish State creates the right conditions for enhanced cultural and community respect, with the potential to shape new relationships of mutual respect with the settled population and better engagement with the State.
8. The State's anomalous position of offering inadequate legal protection by failing to recognise the ethnic status of Irish Travellers in the face of international recommendations, and a desire by Travellers as stated over 20 years, clearly demonstrates a lack of respect for the human rights needs of Travellers. Meanwhile, the Irish Traveller Movement, and others, is required to commit time and resources arguing for the inclusion of Travellers in every bill and policy introduced by successive Irish Governments. Recognition would provide for automatic regard to be had to the specific ethnic needs of Travellers in the legislative or policy - making processes.

### **The State's current position – Ethnicity Denial**

1. Ethnicity denial has created a two-tier human rights protection structure. In Ireland, there are minority groups that have immediate protection under the international human rights framework and other minority groups that do not, despite the fact that it is the stated intention of the international bodies to protect all relevant minority groups.

2. The State position contravenes Travellers' right to "self-identify" and profoundly undermines Travellers' struggle for equality in Ireland without comprehensive legal protection.
3. Ethnicity denial in Ireland contrary to recommendations from international human rights bodies reflects poorly on Ireland, and undermines Ireland's position as a leader in human rights internationally. Domestic ethnicity denial of an indigenous ethnic group undermines Ireland's position on the UN Human Rights Council.
4. Ethnicity denial has negative implications for the rule of international law.
5. No comprehensive explanation has been furnished by any Irish Government to date, on its failure to recognise Traveller ethnicity.

## **Legal Implications**

1. The State's current position is out of sync with international standards and fails to provide full legal protection to Travellers in accordance with international human rights treaties ratified by the Irish Government.
2. Ethnicity denial by the State is vulnerable to further international criticism due to its lack of substantive legal analysis, rendering its position difficult to maintain.
3. The separate identification of Travellers in domestic equality legislation is not an adequate response to the unequal and marginalised position of Travellers. These guarantees provide a lesser level of protection to Travellers compared to the level of protection that should be available to Travellers as an ethnic minority.
4. The insistence that the Government is committed to applying all the protections afforded to ethnic minorities under CERD equally to Travellers is immediately contradicted by the failure to accept a direct recommendation from CERD on recognising Traveller ethnicity.
5. The practical effect of legislative protections for Travellers has been found to be weak and subject to domestic political whim, recognition of Traveller ethnicity provides the framework for greater protection.

## **International Support**

### **1989**

**International Covenant on Civil and Political Rights** was ratified by Ireland in 1989. Article 27 provides for specific protection of ethnic minorities. General Comment 23 of the Human Rights Committee provides that the existence of a minority is not dependent on a decision by the State but is determined by objective criteria.

### **1992**

**UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** was adopted by General Assembly of the United Nations, the existence of a minority is not dependent on a decision by the State but is determined by objective criteria.

### **1999**

**The Council of Europe Framework Convention on National Minorities, was ratified by Ireland.** The Advisory Committee (2006) and the Committee of Ministers (in 2007) affirmed the scope of the Framework Convention as encompassing Travellers. In its most recent opinion the Advisory Committee reminded the Government of the principle of self-identification and to refrain from making conclusive statements affirming that Travellers do not constitute an ethnic group in so far as its position is not based on clear criteria or dialogue.

## **2011 and 2005**

**The UN Committee on the Elimination of Racial Discrimination (CERD)** in its concluding observations reminded the State of the principle of self-identification and expressed concern at the State's persistent refusal to recognise Travellers as an ethnic group notwithstanding the fact that they satisfy internationally recognised criteria.

## **2006**

**The UN Committee on the Rights of the Child** recommended that Ireland work more concretely towards the recognition of Travellers as an ethnic group echoing the observations of the 2005 CERD report referred to above.

## **2008**

**The UN Human Rights Committee** in its Concluding Observations on Ireland's compliance with the International Covenant on Civil and Political Rights (ICCPR) expressed concern that Ireland does not intend to recognise the Traveller community as an ethnic minority.

## **2011 / 12**

**Universal Periodic Review** recommends recognition by State party and in its concluding report the Government state that it "will give serious consideration to the issue".

## **Introduction**

The Irish Traveller Movement (ITM) is a national network of organisations and individuals working within the Traveller community. Established in 1990, the Irish Traveller Movement along with almost all National Traveller organisations has, since its inception, campaigned for the recognition of Traveller ethnicity. Comprising of over 40 Traveller organisations throughout Ireland, it is a partnership between Travellers and settled people committed to seeking full equality for Travellers in Irish society. Its vision for Travellers' full equality is rooted in their ethnic recognition and is underpinned by the mandate from our members to make that a reality. This submission is written in context to that vision and sets out the following;

Part 1	<b>What is ethnicity?</b>
Part 2	<b>What is ethnicity denial and what are its effects?</b>
Part 3	<b>Legal perspective on ethnicity</b>
Part 4	<b>Irish Government's position on ethnicity</b>
Part 5	<b>What are the legal implications of recognising Traveller ethnicity?</b>

### **The position of Travellers in Irish society**

The position of Travellers and the human rights violations they are subject to is highlighted consistently by international and Irish human rights bodies. Travellers face particular obstacles in the enjoyment of their human rights and across a broad range of social indicators, Travellers fare poorly compared to the majority population.

Endemic individual and institutional racism experienced by Travellers is reflected in their outcomes in terms of unemployment, health, inequality, low educational attainment and poor and inadequate living conditions. Travellers' experience of access to relationships of care, respect and solidarity with wider society are often characterized by tension, disrespect and abuse. Travellers' experience of disadvantage was confirmed in the All Ireland Traveller Health Study showing that Traveller Men live 15 years less and Traveller Women 11.5 years less than their settled peers, suicide is 6 times the national average and there is 84% unemployment (Census 2011).

The campaign for Traveller ethnicity recognition contends that the State's failure to recognise ethnicity undermines the status and standing of Travellers in Irish society. On the other hand, recognition has been identified as a progressive human rights measure, key to ending the struggle for equality and effective human rights protections for Travellers.

### **What is Traveller Ethnicity? A Sociological Perspective**

Ethnicity is an intangible concept that focuses upon subjective aspects such as individual and collective perceptions of boundary and difference, located in the realm of human culture rather than human biology<sup>1</sup>. Ethnicity has also been treated as a social phenomenon. In his research on ethnic groups and boundaries, Barth said; *"The boundaries to which we must give our attention are of course social boundaries.... If a group maintains an identity when members interact with others, this entails criteria for determining membership and ways of signalling membership and exclusion."*<sup>2</sup>

Farrell and Watt offer a contemporary academic description of ethnicity which reflects general academic consensus on the issue: *"An ethnic group is a group of people sharing a collective identity based on a sense of common history and ancestry. Ethnic groups possess their own culture, customs, norms, beliefs and traditions. Other relevant characteristics shared in common*

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<sup>1</sup> McVeigh, Robbie. (2007) 'Ethnicity Denial' and Racism: The Case of the Government of Ireland Against Irish Travellers'

<sup>2</sup> Barth, Frederick, "Ethnic Groups and Boundaries". In *Theories of Ethnicity: A Classical Reader*, ed. W. Sollors. (New York: New York University Press, 1996), 300.

*could be language, geographical origin, literature or religion... Ethnicity is a cultural phenomenon and is distinct from the concept of 'race', which has a perceived biological basis.*"<sup>3</sup>

The report of the Task Force on the Traveller community highlighted the importance of recognition of Traveller culture: *"The recognition of Travellers' culture and identity has an importance for Travellers and their status in Irish society. Identity and belonging is vital to everybody and is equal to physical wants and needs. Identity and sense of community cannot be ignored because identity is fiercely cherished by everyone and community is vital for everyone's sense of belonging."*<sup>4</sup>

As a group, Irish Travellers satisfy the sociological criteria to constitute an ethnic group with a distinct culture and tradition. Their long shared history, cultural values, language, customs and traditions make them a self-identified ethnic group.

The extent to which Travellers identify themselves as an ethnic group results from their sense of belonging to a distinct group in Irish society and the fact that much of their thinking, perceptions, feelings, and behaviour stem from their membership of the Traveller community. Four major components of Travellers' ethnic identity include:

- Ethnic Awareness (Travellers' understanding of their own ethnic identity that is distinct from the majority settled population)
- Ethnic Self-Identification
- Ethnic Attitudes (Feelings of solidarity with members of Traveller community)
- Ethnic Behaviours (Behaviour influenced by facets of cultural background. For example, Nomadism)

## **Part 2      What is ethnicity denial and what are its effects?**

### **Ethnicity Denial by the Irish Government**

In 2009 the Irish Government reiterated its position on recognition of Travellers as an ethnic minority:

*"The exact basis for this claim is unclear. The Irish Government's view is that Travellers do not constitute a distinct group from the population as a whole in terms of race, colour, descent or ethnic origin."*<sup>5</sup>

Failure to recognise Traveller ethnicity contributes to a lack of adequate acknowledgment that Travellers suffer exclusion, restriction and discrimination based on their ethnic origin.

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<sup>3</sup> Farrell F. and Watt P., *Responding to Racism*, (Veritas, Dublin 2001)

<sup>4</sup> Report of the Task Force on the Traveller Community, Government Publication, July, 1995.

<sup>5</sup> UN Convention on the Elimination of All Forms of Racial Discrimination, Combined Third and Fourth Reports by Ireland, 21 December 2009, CERD/C/IRL/CO/3-4/Add.1 at p.5

Although ethnicity has de facto been accepted as a part of major Government initiatives in terms of Traveller health and in census collection, the issue of de jure recognition has been left unresolved. This position leads to ambiguity and confusion.

Dr. Robbie McVeigh, anthropologist, concludes that once ethnicity denial takes place, it is impossible to recognise the right of Travellers to their cultural identity or to apply all of the protections afforded to ethnic minorities by CERD equally to them; *“The insistence that the Government is ‘committed to applying all the protections afforded to ethnic minorities by the CERD equally to Travellers’ is immediately contradicted by the failure to accept a direct recommendation from CERD on recognizing Traveller ethnicity.”*<sup>6</sup>

The concept of ethnicity denial can be situated in a historical context. Denying Roma and Traveller ethnicity anywhere across Europe is immediately problematic because it resonates with the legacy of the ‘Gypsy Genocide’ (the *Porrajmos*). UNESCO estimate that 500,000 Roma and Travellers died in the Holocaust. Roma and Traveller people were subject to genocide denial until 1982 as the German Government, like the Irish Government today, refused to recognise their ethnicity.

The legacy of the human rights violations conducted during World War II is a burdensome weight on the shoulders of Governments throughout Europe. Given this sad history, contemporary Governments need to be particularly alert to the need for policies that alleviate the discrimination and marginalisation which characterises the position of ‘Gypsies’ and Travellers across Europe, especially in this, the EU decade for Roma inclusion.

<b>Part 3            Legal Perspective on Ethnicity</b>
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**Ethnicity renders the State vulnerable to further international criticism. Its position is untenable due to its lack of substantive legal analysis, sociological basis and its anomalous status.**

The term ethnicity is not defined under Irish law, nor is the term defined in the Race Directive; the EU Directive from which our primary equality legislation is derived. With no guidance from Irish jurisprudence or legislation, it is necessary to look at jurisprudence from the European Court of Human Rights and the UK courts that have ruled on the issue of identifying ethnic groups.

### **European Court of Human Rights**

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<sup>6</sup> McVeigh, R. (2007) ‘Ethnicity Denial’ and Racism: The Case of the Government of Ireland Against Irish Travellers, at p.9



The European Court of Human Rights in *Timishev v. Russia*<sup>7</sup> addressed the distinction between “race” and “ethnic origin” noting at paragraph 55 that:

*“55. Ethnicity and race are related and overlapping concepts. Whereas the notion of race is rooted in the idea of biological classification of human beings into subspecies according to morphological features such as skin colour or facial characteristics, ethnicity has its origin in the idea of societal groups marked by common nationality, tribal affiliation, religious faith, shared language, or cultural and traditional origins and backgrounds.”*

## UK Authorities

In the United Kingdom Irish Travellers have been recognised as an ethnic minority distinct from non-Traveller Irish people since 2000, and since 1997 in Northern Ireland.

The decision of the House of Lords in *Mandla v. Dowell Lee*<sup>8</sup> is of significant relevance to the interpretation of the phrase “ethnic origin.” There, the word “ethnic” as used in the English *Race Relations Act 1976* was considered in regard to a Sikh boy who was refused entry to a school because he wished to wear a turban in accordance with Sikh tradition. “Racial group” is defined in s.3 (1) of the Act of 1976 “as a group of persons defined by reference to colour, race, nationality or ethnic or national origins.” It was argued that Sikhs (separate from other people from the Punjab region of India) were not a distinct racial group as envisaged by the *Race Relations Act 1976*.

At page 562 of *Mandla*, Lord Fraser laid out what has since become, in effect, the appropriate legal test to be applied when considering whether or not a group constitutes a distinct ethnic group:

*“For a group to constitute an ethnic group in the sense of the Act of 1976, it must, in my opinion, regard itself, and be regarded by others, as a distinct community by virtue of certain characteristics. Some of these characteristics are essential; others are not essential but one or more of them will commonly be found and will help to distinguish the group from the surrounding community. The conditions which appear to me to be essential are these: (1) a long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive; (2) a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance. In addition to those two essential characteristics the following characteristics are, in my opinion, relevant; (3) either a common geographical origin, or descent from a small number of common ancestors; (4) a common language, not necessarily peculiar to the group; (5) a common literature peculiar to the group; (6) a common religion different from*

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<sup>7</sup> *Timishev v. Russia* [2005] ECHR.

<sup>8</sup> *Mandla v. Dowell Lee* [1983] 2 AC 548.

*that of neighbouring groups or from the general community surrounding it; (7) being a minority or being an oppressed or a dominant group within a larger community, for example a conquered people (say, the inhabitants of England shortly after the Norman conquest) and their conquerors might both be ethnic groups.”*

Applying the above criteria, the House of Lords held that Sikhs were a group defined by reference to ethnic origins although not biologically distinguishable from the other peoples living in Punjab. The test developed in *Mandla* has become the standard one used by the courts in England to determine whether other groups could be sufficiently distinguished in terms of their ethnic origins to qualify under s.3(1) of the *Race Relations Act 1976*.

Applying the *Mandla* criteria in relation to whether English Gypsies constituted a racial group, the English Court of Appeal in *Commission for Racial Equality v. Dutton*<sup>9</sup> held that there was sufficient evidence to establish that Gypsies were an identifiable group of persons defined by reference to ethnic origins within the meaning of the *Race Relations Act 1976*.

**The question of whether Irish Travellers constituted an ethnic minority was addressed by the English courts in *O’Leary & Others v. Allied Domecq & Others*.<sup>10</sup>** That case concerned a claim by a number of Irish Travellers who had been refused service in five public houses in London. The court had to consider whether this constituted discrimination on the grounds of ethnic origin for the purposes of the *Race Relations Act 1976*. It was not contended that the discrimination was based on their Irish nationality, as one of the public houses served predominantly only the Irish community.

Judge Goldstein subsequently applied the *Mandla* criteria and held that Travellers met the two essential conditions laid down in that case in that they:-

- (i) Possessed a long shared history which distinguished them from other groups, and,
- (ii) Had a distinct tradition of their own

In so far as the long shared history condition was concerned, the court was satisfied that a history that could be traced back to at least the middle of the 19<sup>th</sup> century was sufficient to fulfil these criteria. Regarding the distinct cultural tradition, it was found that Travellers were plainly nomadic, even if some were now “settled”; some still practised match-making; they tended to marry within their own community; they had certain taboos about pollution and, though mainly Catholic, they had a particular attachment to pilgrimages and rituals.

As for the non-essential criteria set out in *Mandla*, the court held that Irish Travellers did share “a common geographical origin, or descent from a small number of common ancestors.” They had a

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<sup>9</sup> *Commission for Racial Equality v. Dutton* [1989] 2 WLR 17.

<sup>10</sup> *O’Leary & Others v. Allied Domecq & Others* (Unreported, Central London County Court, 29<sup>th</sup> August 2000).

common language, namely Cant, Gammon or Shelta; regardless of use and while they did not have a common written literature, they did have a common oral tradition.

Judge Goldstein noted at the conclusion of his judgment in *O'Leary*, that had the court not determined that Irish Travellers were a distinct ethnic group, it would have led to an anomalous result to the effect that Gypsies would have been included but not Irish Travellers. This was on account of the fact that in the court's view, there was very little, if any, distinction to be drawn within the minds of the population within either the United Kingdom or around the world, between Gypsies on the one hand and the Traveller on the other. Although not synonymous, it was found that they "do share so many characteristics."

From the decision referred to above, it is clear that the English courts have construed the term "ethnic" as used in the *Race Relations Act 1976* to cover groups of people who, while not biologically different from the majority population, or racially different in the traditional sense, or having a different skin colour, have a distinct cultural identity and a shared but distinct history.

By applying the *Mandla* "ethnic" criteria in *O'Leary*, Irish Travellers in England constituted an ethnic minority for the purposes of the *Race Relations Act 1976*. It is submitted therefore that by applying the same criteria to members of the Irish Traveller community in Ireland, they too would clearly be found to form a distinct ethnic group.

In support of this view, reliance is also again placed on the definition of the term "Traveller community" in the *Equal Status Act 2000*:-

*"the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland."*

**By this definition, it is submitted that it is accepted that Travellers possess the two essential criteria of a distinct ethnic group applied in *Mandla* and *O'Leary***

- 1. a long shared history and**
- 2. a distinct tradition of their own.**

**Travellers should be found to come within the term "racial or ethnic origin" as used in the *Race Directive*. It is further submitted that they are therefore entitled to the protection against discrimination on account of their ethnic origin provided for in that Directive.**

#### **Legal Situation in Northern Ireland**

The Race Relations (Northern Ireland) Order 1997 was based upon and broadly similar to the British Race Relations Act (1976) but it had one significant difference - it included Irish Travellers as a named group in the legislation: In this Order in the definition section "racial grounds" ... *includes the grounds of belonging to the Irish Traveller community, that is to say the community*

*of people commonly so called who are identified (both by themselves and by others) as people with a shared history, culture and traditions including, a nomadic way of life on the island of Ireland.”*

While the term ‘racial group’ rather than ‘ethnic group’ was employed, this effectively ended equivocation on Traveller ethnicity in Northern Ireland and also had a bearing on the recognition of Traveller ethnicity in Britain. The definitive strategy on racism in Northern Ireland, *A Racial Equality Strategy for Northern Ireland 2005 – 2010* recognises that ‘Irish Travellers are an indigenous minority ethnic group’<sup>11</sup>. It also makes explicit the connection between Traveller ethnicity and the ‘racial group’ definition stating any reference in this document to “members of minority ethnic communities” includes Irish Travellers.

**The fact that Travellers are recognised as an ethnic group in Northern Ireland and not in the Republic of Ireland is contrary to the commitments made in the Good Friday Agreement relating to equivalence North and South in the protection of human rights.**

### **Anomaly in Irish Legal Position**

The position of the Department of Justice in relation to the legal protection for Travellers specifically states “...*Travellers in Ireland have the same civil and political rights as other citizens under the Constitution*. The key anti-discrimination measures, the Prohibition of Incitement to Hatred Act 1989, the Unfair Dismissals Acts 1977, the Employment Equality Acts and the Equal Status Acts, specifically identify Travellers by name as a protected group. The Equality Act 2004 which transposed the EU racial equality directive applied all of the protections of the directive across all of the nine grounds contained in the legislation, including the ground of membership of the Traveller community. All of the protections afforded to ethnic minorities in EU directives and international conventions apply to Travellers because the Irish legislation giving effect to these international instruments explicitly protects Travellers.”<sup>12</sup>

However, the practical effect of the legislative protections referred to by the Minister for Justice and Equality has been found weak and subject to domestic political whim, in effect ironically creating a two tier equality and human rights domestic framework. In 2003 the Irish Government weakened the practical effect of the **Equal Status Act** in a manner that had a disproportionate effect on Travellers<sup>13</sup>. Cases involving access to licensed premises were moved from the Equality Tribunal to the District Court, resulting in changes to the manner in which cases were dealt with including complainants being potentially liable to legal costs and cases being heard in public. This has had a serious effect on the number of cases taken by Travellers under the Act. As access to

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<sup>11</sup> Office of the First Minister and Deputy First Minister for Northern Ireland (2005: 27)

<sup>12</sup> Republic of Ireland (2012), Houses of the Oireachtas, Parliamentary Debates, (54485/12). 11 December 2012 Minister Alan Shatter responding to oral question posed by Dessie Ellis T.D.

<sup>13</sup> s. 19 Intoxicating Liquor Act 2003 changed the venue for Equal Status Act cases from the Equality Tribunal to the District Court.

licensed premises is a flashpoint for discrimination against Travellers; this change of venue disproportionately affected Travellers. Since the amendment the legal unit of the Equality Authority report that they had failed to win a single case under the 2003 Act<sup>14</sup>.

In the application of International Human Rights Instruments and European Union Directives there is further ambiguity. For example, lack of recognition means that Travellers are not automatically covered under the **EU Race Directive**<sup>15</sup> as the Irish Government is not automatically required to provide protection for Travellers under the domestic implementing legislation. As a result of extensive lobbying, Travellers were only included on the grounds of “individual” protection under the **Equal Status Act 2000** (as amended and extended).

It is noted that successive Irish Governments, when responding to international requests to have Travellers recognised as an ethnic group repeatedly submit that Travellers are protected by the domestic provisions implementing the Race Directive and other anti-racism legislation. While it is hoped that Travellers are protected by the Race Directive, there are concerns in this regard. As Travellers are not recognised as an ethnic group, where issues of interpretation of the Equal Status Acts arise and where guidance from CJEU jurisprudence under the Race Directive is necessary, Travellers may not be in a position to rely upon CJEU jurisprudence under the Directive to interpret the Equal Status Acts. The Irish Human Rights Commission also identifies that potential difficulties may arise where individual Travellers might seek to place direct reliance on the Directive in domestic proceedings, or to seek to impugn the State’s transposition of the Directive.<sup>16</sup>

Furthermore, when any new legislation is introduced to protect minorities the Oireachtas can decide to include or exclude Travellers as they wish. For example, if the Oireachtas were to introduce hate crime legislation, they would have to specifically mention Travellers as they would not automatically be included under ethnic grounds (which would undoubtedly be protected by such legislation). This is not an unfounded fear; both the **Press Council** and **Prohibition of Incitement to Hatred Bill** did not initially include Travellers in their protections until long campaigns by Traveller groups successfully lobbied for their inclusion.

### **Views of the Irish Human Rights Commission**

The IHRC analyses the definition of Traveller Community in the Equal Status Acts (2000 – 2011) *“Traveller community” means the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland.”*

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<sup>14</sup> Brian Merriman of the Equality Authority speaking at conference on 23 October 2012, The Future of Anti-Discrimination Law in Ireland, Irish Council for Civil Liberties (ICCL).

<sup>15</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

<sup>16</sup> IHRC, Submission on the Recognition of the Traveller Community as an Ethnic Minority, January 2013

The IHRC submit that the definition of “Traveller community” as set out in the Equal Status Acts clearly comes within the definition of an ethnic group as set down by the House of Lords in *Mandla v. Dowell Lee*; *“clearly based on objective determinants, all of which are applicable to an ethnic minority, as per the test set out in Mandla v Dowell Lee, where Lord Fraser set out what has become a definitive test of an ethnic minority.”*<sup>17</sup>

## **Part 4      The Irish Government’s Position**

**In Ireland, the difficulty lies less with understanding the existence of ethnic difference, than with knowing how the State meets the needs of such difference.**

Despite the fact that Travellers are recognised as a racial group in Northern Ireland and as an ethnic minority in Britain, the State has failed, despite repeated requests, to formally recognise Travellers as an ethnic group.

It is noted that during the UN Universal Periodic Review Process (UPR) that the Irish Government were recommended to recognise Travellers as an ethnic group. Minister Shatter responded *“there are a number of issues around the proposal of recognition of Travellers as a separate ethnic minority which need to be further considered and addressed and it is an area which is currently being given serious consideration”*<sup>18</sup>.

In Ireland’s National Report under the UN UPR in March 2012 the Government stated that there was a wide divergence of opinion among Irish Travellers in relation to the question of ethnicity and there was no consensus that ethnicity recognition would be a useful step. It is further noted that the Government indicated that in reaching this conclusion, there had been *extensive* discussion with National Traveller Organisations. It is submitted that the term *extensive* discussion in this context is misleading, as the discussion referred to, only took place with 5 Travellers representing 5 separate organisations on a sub group of the National Traveller Monitoring and Advisory Committee (NTMAC). It is noted that the findings of the conference on Traveller ethnicity run by NTMAC at Dublin Castle in September 2012, indicate that contrary to the report of the Irish Government in March 2012, there is very little divergence of opinion on the question of the need for formal recognition of Traveller ethnicity.

Since Ireland was examined by the United Nations on its human rights record under the UPR in October 2011, the Minister for Justice, Equality and Defence, Alan Shatter has indicated on many occasions that the Irish Government is giving the matter of recognising Traveller ethnicity serious consideration. It is noted the Minister indicated that he is aware that it is a long-standing wish of

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<sup>17</sup> IHRC, Submission on the Recognition of the Traveller Community as an Ethnic Minority, January 2013

<sup>18</sup> UPR Working Group Report October 2011

many Travellers that such status be recognised, but there are some divergent views, he referred also to the abovementioned conference at Dublin Castle. We note that the report from that conference has issued and that it corroborates our assertion that the majority of Travellers self-identify as belonging to an ethnic group.

More recently Minister Shatter in response to a Parliamentary Question said:

*“I also want to ensure that if we go down this route, members of the Traveller community favour it and that it will not give rise to unintended consequences and create unexpected difficulties.”*<sup>19</sup> We would submit that the only relevant consequences in addressing the issue of the recognition of Traveller ethnicity are human rights consequences, referring to economic, political or any other consequence in this context is inappropriate.

As discussed in Part 3, there are concerns that the Government’s assertions that Travellers enjoy all of the protections under the Race Directive and other anti-racism legislation are inaccurate and that anti-discrimination legislation protecting Travellers is weak and subject to domestic political whim. **The Irish Traveller Movement contends that the failure on the part of the Irish State to recognise Traveller ethnicity results in a lack of legal clarity, in particular, in relation to international legal protections, effectively creating a two-tier equality framework.**

## **Ireland’s compliance with international human rights law**

### **The International Covenant on Civil and Political Rights (ICCPR)**

The ICCPR was ratified by Ireland in 1989. Article 27 provides for specific protection of ethnic, religious and linguistic minorities. General Comment 23 issued by the Human Rights Committee deals with the rights of minorities protected under Article 27 and states, *“The existence of an ethnic, religious, or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.”*

The import of this in addressing Traveller ethnicity in the Irish State is addressed by the IHRC in its 2013 report on Traveller ethnicity.<sup>20</sup>

### **The Framework Convention on National Minorities**

At Point 31 of the Second Opinion of the Advisory Committee on the Framework Convention, the Advisory Committee confirmed that the principle of self – identification and not State policy,

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<sup>19</sup> Republic of Ireland (2012), Houses of the Oireachtas, Parliamentary Debates, (54485/12). 11 December 2012 Minister Alan Shatter responding to oral question posed by Dessie Ellis T.D.

<sup>20</sup> This statement is extremely important for the State when considering whether it should recognise Travellers as an ethnic minority. First and foremost, whether the State decides to make an official statement recognising Travellers as an ethnic minority or not, will not determine whether Travellers are recognised as such for the purposes of CERD or the Framework Convention or indeed the ICCPR.

should be used in determining the existence or otherwise, of an ethnic group and the Irish Government was advised to refrain from making unfounded denials relating to Traveller ethnicity<sup>21</sup>.

### **Irish Government Report under CERD 2004**

It is noted that the Irish Government refused to recognise Travellers as an ethnic minority in the CERD report in 2004, accepting that Travellers do self-identify as an ethnic minority but indicating that the State was not clear as to the basis for Travellers self-identifying as an ethnic minority. It is noted that the Government's view was that Travellers do not constitute an ethnic group. No justification for this denial was given by the Government as is required under CERD.<sup>22</sup>

### **CERD Committee 2005 - Principle of self-identification.**

The CERD Committee in its report in 2005 recommended that the Irish Government work towards Travellers being recognised as an ethnic group, referring to General Recommendation No.8 which provides guidance in relation to the principle of self-identification. *"The Committee on the Elimination of Racial Discrimination, having considered reports from States parties concerning information about the ways in which individuals are identified as being members of a particular racial or ethnic group or groups, is of the opinion that such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned."*<sup>23</sup>

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<sup>21</sup> "The Irish authorities should refrain from conclusive statements affirming that Travellers do not constitute an ethnic minority in so far as such a position is not based on clear criteria and does not form a dialogue with the minority concerned, taking into account the principle of self identification stemming from Article 3 of the Framework Convention." Strasbourg 30 October 2006, Advisory Committee on the Framework Convention on the Protection of National Minorities ACFC/OP/II (2006) 007

<sup>22</sup> "27. In regard to appendix 1, it should be noted that some of the bodies representing Travellers claim that members of the Traveller community constitute a distinct ethnic group. The exact basis for this claim is unclear. The Government's view is that Travellers do not constitute a distinct group from the population as a whole in terms of race, colour, descent or National or ethnic origin. However, the Government of Ireland accepts the right of Travellers to their cultural identity, regardless of whether the Traveller community may be properly described as an ethnic group. In line with this, the Government is committed to applying all the protections afforded to ethnic minorities by the CERD equally to Travellers. As outlined in Ireland's Report under the International Covenant on Civil and Political Rights, Travellers in Ireland have the same civil and political rights as other citizens under the Constitution and there is no restriction on any such group to enjoy their own culture, to profess and practice their own religion or to use their own language." UN Convention on the Elimination of Racial Discrimination, Combined Initial and Second Periodic Reports by Ireland, 25 March 2004, CERD/C/460/Add.1 p. 12

28. The Government is committed to challenging discrimination against Travellers and has defined membership of the Traveller community as a separate ground on which it is unlawful to discriminate under equality legislation. This was not meant to provide a lesser level of protection to Travellers compared to that afforded to members of ethnic minorities. On the contrary, the separate identification of Travellers in equality legislation guarantees that they are explicitly protected. The Government notes that the Durban Declaration and Action Plan recognized the need to develop effective policies and implementation mechanisms for the full achievement of equality for Roma/Gypsies/Sinti/Travellers and has included at appendix 1 a report on legislative, administrative and other initiatives taken to combat discrimination against members of the Traveller community."

<sup>23</sup> Concluding Observations and Comments of the UN Committee on the Convention on the Elimination of Racial Discrimination, Combined Initial and Second Periodic Reports by Ireland CERD/C/IRL/CO/2. (Concluding Observations/Comments)



**Unless a State can show strong evidence to the contrary, the group must be recognized as an ethnic group. The use of the word shall indicates that States do not have discretion in that regard. General Condition 8 was applied by CERD in its 2005 Report**

*“20. Recalling its general recommendation VIII on the principle of self-identification, the Committee expresses concern at the State party’s position with regard to the recognition of Travellers as an ethnic group. The Committee is of the view that the recognition of Travellers as an ethnic group has important implications under the Convention (arts. 1 and 5).<sup>24</sup>*

***Welcoming the open position of the State party in this respect, the Committee encourages the State party to work more concretely towards recognizing the Traveller community as an ethnic group.”***

### **Irish Government Report under CERD 2011**

In the combined third and fourth reports to the **UNCERD Committee** submitted by the Irish Government on 21 December 2009 the Government state in a “Note on the Text”:

*“ The Equality Act 2004 (which transposed the EU Racial Equality Directive) applied all the protections of that Directive across all of the nine grounds contained in the legislation, including the Traveller Community ground...This does not provide a lesser level of protection to Travellers compared to that afforded to members of ethnic minorities. On the contrary, the specific identification of Travellers in equality legislation guarantees that they are explicitly protected.<sup>25</sup>*

It is noted that the Concluding Observations of CERD were as follows; *“The Committee recalls its previous concluding observations (CERD/C/IRL/CO/2) and General Recommendation 8 (1990) on the principle of self-identification, and expresses concern at the State party’s persistent refusal to recognize Travellers as an ethnic group notwithstanding that they satisfy the internationally recognized criteria. (Articles 1 and 5)*

*The Committee reiterates the recommendation made in its previous concluding Observations and General Recommendation 8 (1990) on the principle of self CERD/ C/IRL/CO/3-4 3 identification that the State party should pay particular attention to self identification as a critical factor in the identification and conceptualization of a people as an ethnic minority group. In this regard, the*

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<sup>24</sup> Concluding Observations and Comments of the UN Committee on the Convention on the Elimination of Racial Discrimination, Combined Initial and Second Periodic Reports by Ireland CERD/C/IRL/CO/2. (Concluding Observations/Comments)

<sup>25</sup> UN Convention on the Elimination of Racial Discrimination, Combined Third and Fourth Periodic Reports by Ireland, 21 December 2009 , CERD/C/IRL/3-4 p. 4

*Committee recommends that the State party should continue to engage with the Traveller community and work concretely towards recognizing Travelers' as an ethnic group.”*<sup>26</sup>

It is noted that the IHRC report to the Minister for Justice Equality and Defence expressed concern in relation to a misapplication of the principle of self identification and the incorrect perception that some form of consensus may be required before the State can formally legally recognise the ethnicity of Travellers. The IHRC points out that; *“While self identification is important in informing this debate both internally within the Traveller community and externally in terms of the relationship between the State and the Traveller community, the principle of self – identification is not co-terminus with the recognition as an ethnic group. If this were so then the CERD Committee could not presume to include Travellers within their recommendation to the State to apply the protections of the Convention to the Traveller Community.”*<sup>27</sup>

## **Irish Government Report under the Universal Periodic Review 2011 and follow up 2012**

The Government was asked to consider the issue of Traveller ethnicity under the UPR process. The Government's response to the request was discussed further at Part 3 above. It is asserted that the State's response is that it had formed an opinion, on the basis of extensive discussion, that there is a divergence of views and a lack of consensus on the issue of recognising Traveller ethnicity. These assertions relating to a divergence of views were unfounded (on the basis that they resulted from a consultation with only 5 Travellers) and the point relating to consensus is patently inconsistent the principle of self-identification.

### **Part 5 What are the legal implications of recognising Traveller Ethnicity?**

Ireland's failure to recognise Traveller ethnicity has left Travellers in an uncertain and unclear legal situation. The Advisory Committee on the Framework Convention and the Opinions of the Advisory Committee on CERD have indicated that the de facto existence of an ethnic group is not dependent upon the State's formal recognition of the group's ethnicity. However the Second Opinion of the Advisory Committee of the Framework Convention has indicated that the authorities should ensure that international and domestic non-discrimination and minority rights guarantees protect Travellers. The UN CERD Committee expressed the view that the recognition of Travellers as an ethnic group has important implications under the Convention.

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<sup>26</sup> Concluding Observations and Comments of the UN Committee on the Convention on the Elimination of Racial Discrimination, Combined Third and Fourth Periodic Reports by Ireland 21 December 2009, CERD/C/IRL 3-4. (Concluding Observations/Comments)

<sup>27</sup> IHRC, Submission on the Recognition of the Traveller Community as an Ethnic Minority, January 2013 p.6

International human rights bodies have accepted that Travellers are a de facto ethnic group and continue to examine the situation of Travellers under their legal mechanisms, the failure of the Irish Government to recognise its own indigenous ethnic minority as such, simply creates confusion and results in ongoing criticism from international human rights bodies. This should not be acceptable for a country with a seat at the UN Human Rights Council.

It is noted that the Irish Government has indicated that Travellers are afforded the same protections as other ethnic groups under International Conventions and the Race Directive. The Irish Government's assertions are untrue. It may be noted that as Travellers are not recognised as an ethnic group, legal opinion is, that Travellers are not protected under the Convention of the Rights of the Child and individual Travellers are not in a position to seek direct reliance on the Race Directive in domestic proceedings, or to seek to impugn the State's transposition of the Directive.

There is a real concern that the Irish State is denying Travellers their right to protection by international legal mechanisms for political reasons.

Recognition of Traveller ethnicity is not an economic or political exercise, it is a human rights exercise governed by anthropological and human rights legal principles and enshrined in the rights of those individuals within the Traveller community to self-identify and seek their rightful comprehensive legal protection.

## **Conclusion**

The matter of Traveller ethnicity recognition is currently under review by the State and has attracted renewed support by both Irish and International Human Rights bodies. Following a mission to Ireland by UN Special Rapporteur for Human Rights Defenders (the office of the UN High Commissioner for Human Rights reiterated the UN's support and stated that the Rapporteur's report echoed earlier recommendations saying "Recommendations made by the UN Treaty Bodies regarding the recognition of Travellers as an ethnic minority should be implemented"<sup>28</sup> and that "Ireland has a unique opportunity to bring human right issues forward now that it has been elected to the UN Human Rights Council and will have the Presidency of the European Union in the first half of 2013,"<sup>29</sup>.

We, the Irish Traveller Movement, considers it necessary that Ireland removes the remaining gaps in the equality infrastructure for Travellers by strengthening domestic law in accordance with existing international protections and human rights law. The Irish Traveller Movement seeks State acknowledgement of Travellers' right to self-identify as an ethnic minority within the Irish State.

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<sup>28</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12823&LangID=E>

<sup>29</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12829&LangID=E>

We bring this matter before the Joint Oireachtas Committee on Justice, Equality and Defence to support their awareness on the issue.

**IHRC Submission on the  
Recognition of the Traveller  
Community as an Ethnic Minority  
in the State**

January 2013

**IHRC**

AN COIMISIÚN UM CHEARTA AN DUINE  
IRISH HUMAN RIGHTS COMMISSION

## 1. Introduction

The Irish Human Rights Commission (IHRC) has a statutory remit under the Human Rights Commission Act 2000 to endeavour to ensure that the human rights of all persons in the State are fully realised and protected. The IHRC seeks to ensure that Irish law and practice reflects best international practice in the area of human rights. To this end, its functions include keeping under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and making such recommendations to the Government as it deems appropriate in relation to the measures the IHRC considers should be taken to strengthen, protect and uphold human rights in the State.

In furtherance of its statutory functions, the IHRC is taking the opportunity to make a submission to the Minister for Justice, Equality and Defence in relation to the State's consideration of recognition of Travellers as an ethnic minority group. The IHRC understands that while views have been expressed by previous governments on the question of Traveller ethnicity, the matter is being given renewed attention by the present government in light of the Universal Periodic Review (UPR) recommendations made to the State in March 2012, and also the follow up process to the State's examination by the UN Committee on the Elimination of All Forms of Racial Discrimination.

## 2. International Assessments and Response

In the context of the UPR process it is noted that the State did not accept the recommendation to recognise the Traveller community "as an official minority".<sup>1</sup> However, in its response of March 2012, the State did indicate that the matter was currently being given serious consideration.<sup>2</sup> In relation to the follow up to the examination in February 2011 by the Committee on the Elimination of all Forms of Racial Discrimination ("the CERD Committee"), the Chair of the Committee, by letter dated 31 August 2012, called on the State to give further information on the national discussion regarding the ethnicity of Travellers. In this context, the principle of self-identification was reiterated, and the importance of Traveller involvement "in [the State's] efforts towards recognizing Travellers as an ethnic group" was also emphasised. The State was also encouraged to seek advice from the Office of the High Commissioner for Human Rights on the matter.

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<sup>1</sup> *Report of the Working Group on the Universal Periodic Review, Ireland (A/ HRC/19/9)*, at para 107.33.

<sup>2</sup> *Report of the Working Group on the Universal Periodic Review, Ireland, Addendum, 6 March 2012*.

<sup>3</sup> *Travellers as an Ethnic Minority under the Convention on the Elimination of Racial Discrimination, A Discussion Paper*, IHRC, 24 March 2004.

<sup>4</sup> *Report of the Working Group on the Universal Periodic Review, Ireland, Addendum, 6 March 2012*. This paper, amongst other things, looked at the question of the recognition of Travellers as an ethnic minority from a legal perspective in terms of relevant case law from the U.K. The paper discussed the

To further this debate, a conference was hosted by the Department of Justice, Equality and Law Reform on 27 September 2012 in Dublin Castle, to explore the question of Travellers and ethnicity. It is understood that a report from that conference will issue in due course.

### 3. The Current Position

#### a. The Position of the IHRC

The IHRC's position on Travellers as an ethnic minority was most fully set out in a discussion document published in 2004.<sup>3</sup> A copy of that document is appended to this Submission for information purposes. While it is not intended to traverse again the analysis put forward at that time, it is of particular note that it was predicted by the IHRC that the CERD Committee, when it came to examine the State's first periodic report, would regard Travellers as an ethnic minority group, and as such, include them within the protections provided under CERD.<sup>4</sup> This view regarding Travellers as an ethnic minority group was reiterated in the IHRC's subsequent reports to the CERD Committee, and the Committee has since recognised Travellers as an ethnic minority group.

#### b. International Human Rights Bodies

As stated, the CERD Committee has since 2005 explicitly accepted the Irish Traveller community as an ethnic minority group for the purpose of the protections under that Convention, and it is with that understanding that the Committee has made its

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<sup>3</sup> *Travellers as an Ethnic Minority under the Convention on the Elimination of Racial Discrimination, A Discussion Paper*, IHRC, 24 March 2004.

<sup>4</sup> This paper, amongst other things, looked at the question of the recognition of Travellers as an ethnic minority from a legal perspective in terms of relevant case law from the U.K. The paper discussed the *Mandla v Dowell Lee* [1983] 2 A.C. 548, H.L.(E) test as to what constitutes an ethnic group, a test which was established by the House of Lords. Irish Travellers were deemed to meet the *Mandla* criteria in the case of *O'Leary v Allied Domecq* (unreported 29 August 2000) and were identified as an ethnic minority for the purposes of the Race Relations Act 1976. That decision has stood unchallenged since August 2000 and in practice the UK Government and public authorities now accept that position. The *Mandla* test has most recently been endorsed again by the UK Supreme Court in *R(E) v JFS Governing Body* [2009] UKSC 15. Here, in determining the construction of s.1(1)(a) of the Race Relations Act 1976, the Supreme Court of the United Kingdom made explicit reference to the wide understanding of the concept of discrimination on grounds of 'ethnic origin' afforded by Article 1(1) of CERD. The influence of CERD permeates and interconnects not only these judgments but also legislative acts of the EU. Council Directive 2000/3/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (otherwise known as the Race Directive) directly refers to CERD, stating that 'the right to equality before the law and protection against discrimination for all persons' contained therein was taken into account in the adoption of the Directive.

recommendations to the State.<sup>5</sup> In addition, Travellers have also been accepted as *de-facto* coming within the protections of the Council of Europe Framework Convention on the Protection of National Minorities (“the Framework Convention”).<sup>6</sup> It is noted that there is no definition of national minority contained in the Framework Convention. However, the Advisory Committee on the Framework Convention in its most recent opinion stated:

*“The Irish authorities should refrain from conclusive statements affirming that Travellers do not constitute an ethnic minority in so far as such a position is not based on clear criteria and does not result from a dialogue with the minority concerned, taking into account the principle of self-identification stemming from Article 3 of the Framework Convention. At the same time, the authorities should ensure, both de jure and de facto, the applicability of international and domestic non-discrimination and minority rights guarantees in relation to the Travellers.”*

Furthermore, a resolution by the Committee of Ministers has also affirmed the scope of the Framework Convention as encompassing Travellers.<sup>7</sup>

Travellers are also recognised as such for the purposes of the International Covenant on Civil and Political Rights (see below).

### c. The Position of the State

Despite the foregoing, there is still no formal recognition by the State that Travellers constitute an ethnic minority group or a national minority for the purpose of international human rights protections, although the State *de facto* distinguishes Travellers from the settled community in, *inter alia*, its national health, education and housing strategies, which aim to address the significant disparities in outcomes in these areas between Travellers and the majority population.<sup>8</sup> The State indicated a firm denial of the possibility of recognition in its first report to the CERD Committee in 2004.<sup>9</sup> In its most recent State Report, made pursuant to Article 9 of CERD, the State made the following assertion in relation to Travellers and ethnicity:

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<sup>5</sup> CERD Concluding Observations of the Committee on the Elimination of Racial Discrimination, 66<sup>th</sup> session, April 2005, CERD/C/IRL/CO/2.

<sup>6</sup> Second Opinion on Ireland, 6 October 2006, ACFC/OP/II(2006)007, at para. 31. It is understood that a third opinion was adopted in October 2012, but has not been made public as of the date of this submission.

<sup>7</sup> See Resolution CM/ResCMN(2007)10 on the implementation of the Framework Convention for the Protection of National Minorities by Ireland, adopted 20 June 2007.

<sup>8</sup> See for instance *All Ireland Traveller Health Study, Our Geels*, School of Public Health, Physiotherapy and Population Science, University College Dublin (2010), Department of Health and Children; The Housing (Traveller Accommodation) Act 1998, requires periodic Traveller Accommodation Programmes to be adopted by each local authority; *Report and Recommendations for A Traveller Education Strategy*, Department of Education and Skills, 2006..

<sup>9</sup> UN Convention on the Elimination of All Forms of Racial Discrimination, Combined First and Second Reports by Ireland, 2004, CERD/C/460/ Add.1, at paras 27-28.



*“The Irish Government’s view is that Travellers do not constitute a distinct group from the population as a whole in terms of race, colour, descent or ethnic origin.”<sup>10</sup>*

However, the basis for this rejection of the ethnic minority status of Travellers has never been predicated on a substantive legal or academic argument. Indeed the legal analysis and academic views put forward now all appear to point to the opposite conclusion, rendering the State’s position difficult to maintain.<sup>11</sup> The IHRC welcomes the fact that the former outright negative stance has more recently been eschewed by the present Government in favour of a more considered approach.<sup>12</sup>

Following on the examination of the State in 2011 by the CERD Committee, the most recent response issued by the State to the Concluding Observations of the CERD Committee was as follows:

*“The question has been the subject of extensive discussion at meetings of the National Traveller Monitoring and Advisory Committee. Discussions with the five national Traveller organizations have shown that there is a divergence of opinion among Irish Travellers in relation to the question of ethnicity. It is important that this debate takes place in the Irish Traveller community and full consideration be given to the implications and consequences of any such recognition”.<sup>13</sup>*

Thus it appears that Government reluctance to give a firm acknowledgment of Traveller ethnicity is predicated – at least in part - on a stated lack of consensus on the matter amongst Travellers themselves.<sup>14</sup> Certain concerns arise from this assertion, not alone in relation to the factual situation as the IHRC understands it (i.e. whether the national organisations oppose recognition), but also because it is unclear how such an assertion of the need for consensus can be considered to have decisive value in the context of the legal recognition of ethnicity under CERD, or in relation to the acceptance of Travellers as a national minority under the Framework Convention.

#### 4. The Principle of Self-Identification

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<sup>10</sup> UN Convention on the Elimination of All Forms of Racial Discrimination, Combined Third and Fourth Reports by Ireland, 21 December 2009, CERD/C/IRL/CO/3-4/Add.1 at p. 5.

<sup>11</sup> For an overview of the legal and academic analysis of Travellers and ethnicity, see for instance *Traveller Ethnicity*, The Equality Authority, July 2006, at pgs 43-60, *Travellers as an Ethnic Minority under the Convention on the Elimination of Racial Discrimination, A Discussion Paper*, IHRC, 24 March 2004. See also, *The Causes and Consequences of Ethnicity Denial for Irish Travellers*, Dr David Keane, available at [www.itmtrav.ie](http://www.itmtrav.ie)

<sup>12</sup> CERD/C/IRL/CO/3-4/Add.1.

<sup>13</sup> CERD Concluding Observations of the Committee on the Elimination of Racial Discrimination, Ireland, Addendum, 28 June 2012, CERD/C/IRL/CO/3-4/Add.1, at para. 5.

<sup>14</sup> CERD/C/IRL/CO/3-4/Add.1, at para. 5.

In line with its statutory functions, the IHRC is concerned to ensure that the outcome of the present deliberations within Government on the issue of Traveller ethnicity is fully informed by the human rights obligations to which the State has freely committed itself. In particular, the IHRC draws attention to the fact that the views of Traveller organisations appear to be in favour of recognition and to the fact there may be some confusion regarding the core meaning of the principle of self-identification or its significance in the debate.

#### a. The Views of Traveller Organisations

First as regards the factual situation, the IHRC is somewhat surprised that the State has come to the view that the main Traveller organisations are in disagreement on the matter of recognition of ethnicity, particularly after those organisations campaigned over a protracted period for such recognition. For example, Pavee Point published a press release welcoming the indication at Ireland's October 2011 UPR hearing that consideration was being given to the recognition of Travellers as a minority ethnic group.<sup>15</sup> Similarly, the Irish Traveller Movement (ITM) published a leaflet entitled "Traveller Ethnicity" which proposes that the recognition of Travellers as an ethnic group would provide enhanced protection under international human rights law and domestic provisions and would have a positive impact on how society views Travellers.<sup>16</sup> ITM also established an online petition for those who wished to support its call to the Government to recognise Travellers as an ethnic minority group and suggested that ethnic status would have wide-ranging positive implications for Travellers.<sup>17</sup> In 2010, four national Traveller organisations (Pavee Point, ITM, National Traveller Women's Forum and Mincear Whidden) combined to make a joint submission calling on the Government to recognise Traveller ethnicity.<sup>18</sup>

As the IHRC understands the position, the State is dealing with five Traveller organisations, all with varying remits, some of which have a particular human rights focus.<sup>19</sup> Of those five groups, as referred to above four are unequivocal about seeking recognition of Traveller ethnicity, while the remaining organisation; Involve, has not expressed a view either way but has indicated that the matter should be the subject of a fully informed and open debate within the Traveller community.<sup>20</sup> In this regard, the

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<sup>15</sup> Pavee Point Traveller Centre Press Release, 27 February 2012, "Pavee Point meets representatives on UN National Minorities Convention and EC Racism and Intolerance Bodies", available at <http://paveepoint.ie/2011/10/statement-pavee-point-welcomes-traveller-ethnicity-move>

<sup>16</sup> This leaflet is available on the ITM website at [http://www.itmtrav.ie/keyissues/myview\\_new/46](http://www.itmtrav.ie/keyissues/myview_new/46)

<sup>17</sup> Irish Traveller Movement, "ITM Ethnicity Petition", available at [www.itmtrav.ie/petition/pview/5](http://www.itmtrav.ie/petition/pview/5)

<sup>18</sup> See *Traveller Ethnicity, Submission to the Department of Community, Equality and Gaeltacht Affairs*, ITM, Pavee Point, Mincear Whidden and National Traveller Women's Forum, October 2010.

<sup>19</sup> Although the Government has not been clear as to the organisations concerned, the IHRC understands that the five national organisations are; The Irish Traveller Movement, Pavee Point, The National Traveller Women's Forum, Minceir Whidden and Involve (previously the National Association of Traveller Training Centres). It is noted that ITM is a membership based organisation with 70 local and national Traveller organisations in its membership.

<sup>20</sup> See *Involve Annual Report 2009-2010*, available at [www.involve.ie](http://www.involve.ie)

State should clarify its view as to whether (notwithstanding some misgivings regarding the term ethnicity, or ethnic origin), there are in fact any Traveller organisations, or individual Travellers campaigning to ensure that Travellers are not included in the protections under CERD, the Framework Convention or protection from discrimination under EU law.<sup>21</sup>

## **b. The Views of the CERD Committee**

The CERD Committee has repeatedly emphasised the importance of the principle of self-identification in discussions regarding ethnic minority status in general and Travellers and ethnicity in particular. However, the IHRC is concerned that this principle may be relied on by the State (and possibly others) as a requirement under CERD that there would be some form of consensus amongst Travellers and Traveller groups in relation to whether or not the community itself constitutes an ethnic group. While self-identification is important in informing this debate both internally within the Traveller community and externally in terms of the relationship between the State and the Traveller community, the principle of self-identification is not co-terminus with recognition as an ethnic group. If this were so then the CERD Committee could not presume to include Travellers within their recommendations to the State or apply the protections under the Convention to the Traveller community. If the State's apparent approach of seeking consensus as a pre-requisite to recognition of ethnicity were correct, then so long as any individual Traveller or Traveller organisation objected to such recognition, for whatever reason, then the State would be prevented from recognising Travellers as an ethnic group irrespective of whether the vast majority of Travellers wished to be so recognised or indeed fulfilled the necessary objective criteria for recognition as such a group.<sup>22</sup> This would of course lead to an illogical outcome. There is nothing in the views expressed by the CERD Committee that would suggest that some form of unanimity or consensus must exist within a particular group before they can enjoy or claim the protections under that Convention.

Guidance is provided in relation to the principle of self-identification, in General Recommendation No. 8 issued by the CERD Committee.<sup>23</sup> It is useful to set out in full what is stated in that recommendation, as it very succinctly explains the application of the principle:

*"The Committee on the Elimination of Racial Discrimination,*

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<sup>21</sup> Directive 2000/43/EC.

<sup>22</sup> For instance, it would not be difficult to conceive of a situation where the matter might come to be considered under Article 8 and/or 14 of the European Convention of Human Rights, or possibly by way of a reference to the CJEU, if a domestic Court of Tribunal were to seek guidance as to the application of the "Race Directive" to the Traveller community.

<sup>23</sup> General Recommendation 8, Membership of Racial or Ethnic Groups based on Self-Identification (Thirty-eighth session, 1990) U.N. Doc. A/45/18 at 79 (1991).

*Having considered reports from States parties concerning information about the ways in which individuals are identified as being members of a particular racial or ethnic groups or groups,*

*Is of the opinion that such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned."*

The first notable observation that may be made in relation to the recommendation is that it relates to self-identification by individuals, not groups. It is the individual who must decide whether they belong to an ethnic group, and this decision is based on how the individual wishes to identify his or her self. Neither the group nor the State may require an individual to so identify. This is wholly a matter for the individual themselves. The principle of self-identification, as explained in General Recommendation No. 8, does not establish how an ethnic group is to be identified objectively, and therefore reliance on the principle as a necessary determinant of ethnicity is incorrect. It follows, in the IHRC's view, that nothing in the principle of self-identification may be relied on by the State to require unanimity or indeed consensus amongst Travellers that they constitute an ethnic group.

The principle requires, however, that where there is persuasive evidence that an ethnic group exists in a State, as it is submitted exists in relation to Travellers, then individuals will not be denied the right to identify as part of that group unless the State can show some justification to the contrary. On the other hand, the principle protects the right of any individual Traveller to choose whether or not to be so identified.

### **c. The Framework Convention on National Minorities**

A similar approach is dictated by the Framework Convention. "National minorities" may of course include ethnic groups, but the term is also wider in its application. Article 3 of the Framework Convention states:

- 1. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.*
- 2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.*

Again under the Framework Convention, self-identification by all members of a group is not necessary for recognition by the State that there exists, within its territory, a national minority. Moreover, the question of whether an individual enjoys protection under the Convention is a matter of individual choice, and may not be imposed by the

State or by others. There is no definition of “national minority”, but a pragmatic approach is urged in this regard.<sup>24</sup>

#### d. The International Covenant on Civil and Political Rights

Article 27 of the International Covenant on Civil and Political Rights (“ICCPR”) provides for specific protection of the rights of ethnic, religious and linguistic minorities. General Comment 23 issued by the Human Rights Committee deals with the rights of minorities protected under Article 27, and states:

*“The existence of an ethnic, religious, or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.”*

This statement is extremely important for the State when considering whether it should recognise Travellers as an ethnic minority. First and foremost, whether the State decides to make an official statement recognising Travellers as an ethnic minority or not, will not determine whether Travellers are recognised as such for the purposes of CERD or the Framework Convention or indeed the ICCPR.<sup>25</sup> It would certainly provide a more coherent approach to upholding the human rights of Travellers if the State were to recognise that CERD, the Framework Convention and the ICCPR are all applicable to Travellers as of right. Secondly, this statement from the Human Rights Committee requires the State to have regard to relevant objective criteria when considering the question of ethnicity. The IHRC would simply observe again that the legal criteria established to date (see below), and current academic analysis, all of which is essentially objective in nature, leads to the conclusion that Travellers are an ethnic minority.<sup>26</sup> It is also apposite, in this regard, to recall the definition of the “Traveller community” adopted by the Oireachtas for the purpose of the Equal Status Acts (2000-2011):

*“Traveller community” means the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland.*<sup>27</sup>

This definition is clearly based on objective determinants, all of which are applicable to an ethnic minority, as per the test set out in *Mandla v Dowell Lee*, where Lord Fraser set out what has become regarded as the definitive legal test of an ethnic minority:

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<sup>24</sup> Framework Convention for the Protection of National Minorities, Explanatory Report (ETS No. 157), at para. 12.

<sup>25</sup> The Human Rights Committee in considering Ireland's third periodic report under the ICCPR stated in relation to Travellers: “*The State party should take steps to recognize Travellers as an ethnic minority group.*” CCPR/C/IRL/CO/3, at para 23.

<sup>26</sup> *Supra* fn 11.

<sup>27</sup> Equal Status Acts 2000-2011, s 2(1).

*"The conditions which appear to me to be essential are these: (1) a long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive; (2) a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance. In addition to those two essential characteristics the following characteristics are, in my opinion, relevant; (3) either a common geographical origin, or descent from a small number of common ancestors; (4) a common language, not necessarily peculiar to the group; (5) a common literature peculiar to the group; (6) a common religion different from that of neighbouring groups or from the general community surrounding it; (7) being a minority or being an oppressed or a dominant group within a larger community, for example a conquered people (say, the inhabitants of England shortly after the Norman conquest) and their conquerors might both be ethnic groups."*<sup>28</sup>

It is also significant that since 2006 the census collects data concerning the number of Travellers in the State under the heading "ethnic and cultural background". In October 2012, the Central Statistics Office published results of the 2011 census under this heading.<sup>29</sup> The statistics in relation to members of the Traveller community are striking in a number of respects. These present an objective measure of the distinctions between this community and the population in general. The number of Irish Travellers enumerated in 2011 increased by 32% from 2006.<sup>30</sup> This figure clearly shows that at least a majority (although probably not all) Travellers self-identify as part of a recognised group separate from the general category of "White Irish". In addition the statistics show a significant difference between Travellers and the general population in relation to fertility rates, marriage, accommodation type and occupation. More worryingly, the figures demonstrate that Travellers still have very poor outcomes in certain areas, such as employment, health, education and living conditions. These poor outcomes underline the fact that members of the Traveller community still experience significant discrimination and disadvantage in many aspects of their lives on account of their identity, and that there is an ongoing need for the State to take special measures as required under CERD, the Framework Convention, the ICCPR and other international conventions to address these disparities between the general population and the Traveller community. In this regard, it is submitted, the link between recognition of ethnicity and better outcomes for members of the Traveller community cannot be disregarded.

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<sup>28</sup> In *Mandla v Dowell Lee* [1983] 2 A.C. 548, at p.562.

<sup>29</sup> See Central Statistics Office Publication, *Profile 7: Religion, Ethnicity and Irish Travellers* (October 2012), at p. 25.

<sup>30</sup> An increase of 22,435 in 2006 to 29,537 in 2011 (CSO, October 2012, p. 27).

## **5. Implications of the Recognition Ethnicity**

### **a. Practical Implications**

Finally, the IHRC should address the implications from the point of view of the State, if it does provide formal recognition to Travellers of their ethnicity, also recalling that the failure to recognise ethnicity also has consequences. As a preliminary point, it must first be emphasised that recognition by the State of Traveller ethnicity should in no way be influenced by concerns as to the practical implications that flow from such recognition. It would clearly be a breach of CERD, the Framework Convention and the ICCPR to withhold recognition of ethnicity on the basis that it might impose certain duties or obligations on the State. As already pointed out, such duties devolve on the State independently of any formal recognition in that regard.

The practical implications which may flow from recognition include the need to take positive measures to address the underlying causes of discrimination which is resulting in poor outcomes for Travellers. However, it should be noted that in practical terms, the State is already taking positive measures to improve some aspects of the situation of the Traveller community and in addressing the underlying causes of discrimination. While these measures could be deepened and harmonised, there is no doubt that the State is in a position to report to international bodies the steps it is taking to address Traveller health, education, living conditions and other outcomes. The practical costs, if any, on the State of recognition of Travellers as an ethnic minority may thus not be overly burdensome so as to suggest a policy of continued non-recognition. The costs of non-recognition will, on the other hand, continue to be international censure of the State (see below).

### **b. International Legal Instruments**

As set out above, the two principal international instruments to which the State is a party, and in relation to which ethnicity or recognition as a national minority has core significance, are CERD and the Framework Convention. In relation to both conventions, and taking into account the views of both supervisory Committees, it is clear that the State's responsibility to Travellers is already being assessed under both legal frameworks. Both committees regard Travellers as coming within their remit and have made comments and recommendations on the treatment of Travellers by the State that is not conditional on State recognition of ethnicity. An overarching thematic concern in relation to the Traveller community that may be discerned from the observations of both committees is the State's previous refusal, and present equivocation, regarding recognition of ethnicity. This is hardly surprising when the protections under both conventions flow from the "status" of ethnic group or national minority. The other matters that are raised by both Committees in terms of education, health and accommodation are, as noted above, already areas where the State accepts that special measures are required. Indeed some stand-alone measures have been

devised to meet the particular circumstances of Travellers, albeit that there is scope for further progress in those areas; a matter commented on by both committees.<sup>31</sup>

Aside from Article 27 of the ICCPR, already referred to, another legal instrument where ethnicity is the material basis for legal protection is the EU Race Directive.<sup>32</sup> The Traveller community is already protected on the same basis as race, ethnicity or nationality under domestic equality legislation and included under the Equality Act 2004, which is the transposing legislation for the Directive. However, there may be circumstances in which an individual Traveller might seek to place direct reliance on a Directive in domestic proceedings, or indeed seek to impugn the State's transposition of the Directive for whatever reason and in those circumstances the question would have to be decided as to whether Travellers are an ethnic group for the purpose of the Directive. While it is presently unclear whether Travellers, in the absence of State acceptance of ethnicity, might rely on the Race Directive, it is submitted that, based on the objective evidence available, a domestic court, or indeed the Court of Justice of the European Union, would find that Travellers are indeed protected by the Race Directive.<sup>33</sup> It would be an unfortunate circumstance for the State to find itself seeking to exclude the protections of EU equality law to an identified national minority that experiences, and is vulnerable to, significant levels of discrimination.

### c. Benefits of State Recognition

If the State formally recognises Travellers as an ethnic group, then naturally this will open up a new and ongoing dialogue as to how the State and the Traveller community interact in the future. It can only be assumed, based on the views of the majority of Traveller organisations and representatives, that recognition of ethnicity would be seen as a positive engagement with Travellers by the State. In this respect the consequences of recognition of ethnicity can only be viewed as beneficial, both from the point of view of the State and Travellers. This is so even if the State must nonetheless critically examine the appropriateness of certain legislation and policies that may be perceived as having negative consequences for Travellers.<sup>34</sup> Ultimately, recognition involves the State accepting without reservation that Travellers enjoy the

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<sup>31</sup> CERD Concluding Observations of the Committee on the Elimination of Racial Discrimination, 78<sup>th</sup> session, March 2011 (Advanced, unedited version) s.13, Advisory Committee on the Framework Convention for the Protection of National Minorities: Second Opinion on Ireland, adopted on 6 October 2006- see especially pg 5.

<sup>32</sup> Directive 2000/43/EC.

<sup>33</sup> It must be noted that litigation has been the route through which Irish Travellers (*O'Leary and Other v Allied Domecq and Others*), Romani Gypsies (*IHRC for Racial Equality v Dutton* [1989] 2 WLR 17) and Scottish Travellers (*MacLennan v Gypsy Traveller Education and Information Project* S/132721/07) have been recognised as ethnic minorities in the United Kingdom.

<sup>34</sup> For instance section 24 of the Housing (Miscellaneous Provisions) Act 2002 ( "the Criminal Trespass legislation"), the transfer of jurisdiction for discrimination cases concerning licensed premises from the Equality Tribunal to the District Court by section 19 of the Licensing Act 2003, the Control of Horses Act 1996 and the provision of transient facilities and sites under the Housing (Traveller Accommodation) Act 1998.



full protections of CERD, the Framework Convention, the ICCPR and other conventions and the protections of EU equality law, and according such protection as it is merited. The IHRC would respectfully submit that this is in fact a relatively modest step for the State to take, but that it will have profound benefits in terms of engagement with the Traveller community.<sup>35</sup> Over and above this, an open dialogue between the State and the supervisory committees in of CERD and the Framework Convention, in relation to addressing the discrimination experiences by Travellers and guidance in relation to the measures required to address same, will inevitably lead to a more coherent response by the State to tackling areas where Travellers continue to experience consistently poor outcomes.

#### **d. The Drawbacks of a Failure to Recognise Ethnicity**

On the other hand, as noted, the failure to recognise Travellers as an ethnic group also has consequences. First, it negatively impacts on the engagement between Travellers and the State as recognition of ethnicity has clearly come to be seen as a litmus test for the State's attitude towards Travellers.

There is also, at this point in time, a clear divergence between the State's view of the Traveller community and that of the international community. This is drawing negative comment and observations from the supervisory committees of CERD the Framework Convention and the ICCPR. A further assertion by the State that Travellers are not an ethnic minority can only draw continued criticism of the State at an international level. The message it would send to the international community is that Travellers are not being accorded the full protection of international law, and that Ireland does not fully uphold the human rights of the Traveller community. This, it is submitted, is not in the State's interest.

#### **e. Conclusion**

The IHRC considers the recognition of Traveller ethnicity by the State is a matter of human rights law which must be properly informed by the appropriate international standards. In this submission, based on the analysis set out, the IHRC is renewing its call that the State issue a statement that it formally recognises Travellers as an ethnic minority, while also emphasising the right of each individual member of the Traveller community to exercise their right of self-identification.

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<sup>35</sup> It is also noted that Travellers are recognised as an ethnic group in Northern Ireland for the purpose of relevant human rights protections. In this regard, similar recognition of Traveller ethnicity in the Republic of Ireland, would remove any disparity in human rights protections in respect of the same community North and South of the Border. This would be in line with the State's commitment to ensure at least an equivalent level of protection of human rights as pertains in Northern Ireland, as set out in the Belfast Agreement 1998.

**Submission to Joint Oireachtas Committee  
on Justice, Equality and Defence**

**on**

**Recognition of Traveller Ethnicity**

Laois Travellers Action Group

20<sup>th</sup> July 2013

## Laois Travellers Action Group (LTAG)

is an independent Traveller organisation representing the Travelling Community in County Laois. Laois Travellers Action Group's board of management is formed by a partnership of members from the Travelling and settled community.

LTAG was formed in 1998 under the name of Laois Travellers Views. In 2002 the organisation change its name to Laois Travellers Action Group. In 2005 it became a non-profit company. Since 2005 LTAG runs a Community Development Programme which employs various staff and involves specific work in the areas of Health and Men's Health from a holistic approach based on the principles of Community Development.

To date LTAG has been successfully implementing its work plans. LTAG's work has resulted in following improvements : more and diverse Traveller representation, implementation of a Primary Health Care training programme for Travellers, established point of contact for Travellers, increased Traveller capacity, development of a horse project, development of enterprise and training initiatives.

There are about 150 Traveller families living in County Laois<sup>1</sup> Through LTAG's staff<sup>2</sup> and structures (Board of Management and its sub-committees, Men's Group, Women's Group, Horse Project and Traveller representatives) , the organisation is in **regular contact** with most Traveller families living in the county.

LTAG acts as a central body that collects information **and voices** common concerns, needs, difficulties, opinions,... at different local, regional and national forum, i.e. Laois Traveller Interagency, Local Traveller Accommodation Consultative Committee, Regional Drugs Task Force, Midlands and National Traveller Health Networks.

Within County Laois LTAG is recognised among Travellers and non-Travellers as the organisation that represents the Travelling Community. On behalf of Travellers in Laois LTAG has put forward recommendations, submissions and proposals to local and regional agencies such as the HSE or Laois County Council.

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<sup>1</sup> The Midlands region has one of the highest proportion of Traveller population in Ireland. The 2002 census reflected that the Midlands region had the highest proportion of Traveller population in Ireland. In Laois the proportion is of 7.8 Travellers per 1,000 population, in Offaly 10.4 Travellers per 1,000 population and the national average is of 6.5 Travellers per 1,000 population.

<sup>2</sup> Part-time Co-ordinator, 3 Community Development Workers (1 full-time, 2 part-time), 5 Traveller Primary Health Care Workers, 1 Horse Project facilitator (1 day/week).

## **Recommendation:**

The Irish State should formally recognise Travellers as an ethnic group for the purpose of human rights protection.

**In taking into account this recommendation LTAG is asking the committee members to consider:**

- 1. Sociological and anthropological criteria for the definition of ethnic group.**
- 2. The Irish ethnic diversity resulting from different historical processes of cultural socialization within the jurisdiction of the current Irish Estate.**
- 3. Current international practices and legislation.**
- 4. The views of Travellers living in Laois.**

Travellers in Laois feel like second class citizens on a daily basis. LTAG is an organisation where Travellers talk about their difficulties in renting private accommodation, with name calling in schools and neighbourhoods, with accessing land to rent for their horses, accessing hotels for weddings, etc., etc.

Overall Travellers sense and live with the stigmatisation and prejudice of a majority of settled people and feel that they are being recognised as a different group on a negative basis only. This has profound effects on Travellers psychology as many Travellers have absorbed and internalised this negative projection as “the way things are”. Social and cultural exclusion has become more evident since Travellers have been forced to permanent accommodation. Nomadism (as it used to be traditionally for Travellers) is neither legally possible nor economically viable. The policies of enforcement of permanent residencies have put Travellers in a very difficult place personally, socially and culturally. There is a sense that they are expected to negate of their history, life style, values,... in a word negate of their sense of belonging to a different cultural group in order to “fit in”.

It is in the daily life of relating to a non-Traveller environment that a Traveller will feel and live the denial of his/her culture because symbolic life and social and practices around him or her do not reflect or acknowledge their existence as a different cultural group in a dignifying manner.

In Laois Travellers want their sense of identity being positively recognised, they want to be publicly acknowledged for whom they are and for what they contribute, they want to feel they are part and parcel of the Irish social and cultural landscape on an equal basis.

- 5. The lack of clarity, lack of support and existing ambiguous language of the Irish Government in relation to Traveller ethnicity.**
- 6. The consequences of the current situation:**
  - a. for the Travelling Community**
  - b. in relation to international law**

7. Irish State international image and projection in relation to:

- Undervaluing its ethnic and cultural diversity
- Denying an indigenous ethnic group its human right of recognition.

8. Submissions and information provided by other Traveller organisations, specifically by LTAG's umbrella organisation the Irish Traveller Movement.

Organisational Details			
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Fax Number	0578687134		
Contact e-mail	<a href="mailto:laoistravellers@gmail.com">laoistravellers@gmail.com</a>		
Name & Address of Main Contact/Liaison Person  Julie Nevin CO/LTAG Peppers Court JFL Avenue Portlaoise Co Laois			
Charity (CHY) No.	CHY 19107	Company Ref.	6433265G

FAO Oir Justice & Defence Committee

Dear Sir/Madam

the St. Anthony`s Park Community Development Initiative (Cork) herewith adds its support to the campaign of Travellers & Traveller organisations to have the ethnic identity of Travellers (a fact, recognised by most Travellers & anthropological research) formally recognised by the state.

In case this is not known to the committee, we would like to draw the committee`s attention to the motion of Cork City Council, which states "[That Cork City Council supports the campaign by the Irish Traveller Movement & others to have the Travelling Community in the state designated an Ethnic group, such a designation is supported by the UN Committee on the Elimination of Racial Discrimination \(CERD\), the Travelling Community are recognised in the North of Ireland and in Great Britain as an Ethnic Group](#)"

This motion was adopted by City Council in June 2013, receiving cross-party support from across the political spectrum (with only two individual councillors expressing their disagreement).

We hope the committee will take cognisance of this decision.

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[Thomas Erbsloh](#)

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