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The Importance of Recognising Travellers as an Ethnic Group

**Submission to the Joint Oireachtas Committee on
Human Rights**

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Recognising Travellers as an Ethnic Group

This submission contends that Travellers should be recognised as an ethnic group in Ireland and seeks to draw support for this position from policy developments and conceptual approaches within Ireland and at an international level. The submission has been drawn up by the National Consultative Committee on Racism and Interculturalism (NCCRI), an expert body that seeks to provide advice, develop initiatives to address racism and to support a more inclusive, intercultural policy approach in Ireland¹.

Until recently the Government has been non-committal on the question of recognising Travellers as an ethnic group. This was reflected in the Equality legislation (1998 and 2000) where they were recognised as a separate ground for protection against discrimination as opposed to being included under the 'race ground'. However, this position has now clearly changed. In the draft report to Committee on the Elimination of all Forms of Racial Discrimination under the recent Convention ratified by Ireland, the Government's position has now hardened to one of explicitly not recognising Travellers as an ethnic group.

The First National Report by Ireland to the Committee on the Elimination of All Forms of Racial Discrimination (CERD), July 2003, (Department of Justice, Equality and Law Reform) states in plain terms "*In regard to the scope of the report it should be noted that Irish Travellers do not constitute a distinct group from the population as a whole in terms of race, colour, descent, or national or ethnic origin.*"

This position was also confirmed by a parliamentary question in October 2003, which restated this view. This position is out of step with most respected legal and academic opinion in recent years, which clearly would support the position that Irish Travellers are an ethnic group. It is also inconsistent with Government action in other areas of policy where Travellers are either recognised de facto as an ethnic group, with almost identical language used to describe an ethnic group. To date the Government have not set out a detailed rationale for this change and have not made clear what, if any, direct policy implications such a move are going to be. However there are concerns among Traveller groups that the move is in some ways symbolic of a perceived hardening of a policy position towards Travellers in recent years and there has and will be policy changes arising from this position.

The legal position in other jurisdictions

Other jurisdictions provide definitions of what constitutes an ethnic group, which are not yet available in Irish law.

In 2000 a number of Travellers wanted to take a discrimination case in England under the Race Relations Act (1976) against a number of pubs that had refused them service. It was decided that before the case could proceed it must be ascertained if Irish Travellers should be recognised as a minority ethnic group under the Act. The Court took into consideration other cases where the issue of ethnicity has been discussed. In particular a

¹ See www.nccri.com

1983 case referred to as Mandla whereby the Judge noted 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 a New Zealand case cited it was noted that “*a group is identifiable in terms of its ethnic origins if it is a segment of the population distinguished from others by a sufficient combination of shared customs, beliefs, traditions and characteristics derived from a common or presumed common past, even if not drawn from what in biological terms is a common racial stock. It is that combination which gives them a historically determined social identity in their own eyes and in the eyes of others outside the group. They have a distinct social identity based not simply on group cohesion and solidarity but also on their belief as to their historical antecedents.*”

The judgement said “*Our conclusions therefore are that of the two essential characteristics, namely the long shared history and the cultural tradition, we are satisfied that both of these criteria have been sufficiently satisfied....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 Irish context

The Equal Status Act provides a definition of Travellers based on the definition used in the Northern Ireland Race Relations Order, which evolved out of British case law. This definition states “*‘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.*”

Ironically, the inclusion of Travellers within the Republic’s 1989 Incitement to Hatred Act gave weight to the arguments for their inclusion in the Northern Ireland Race Relations Order which in turn influenced how they were *defined* in the equality legislation in the Republic. Ideally in the equality legislation the grounds of ‘race’ and the ‘Traveller community’ would have been combined in a single ground more properly named the ground of ‘racism’ – with Travellers named amongst the range of issues and categories covered.

Official responses

The Irish State has been slow to recognise Travellers as a minority ethnic group even though there has been implicit recognition through, for example, the involvement of

Traveller representatives in the co-ordinating committee for the European Year Against Racism (1997), the National Consultative Committee on Racism and Interculturalism and the Know Racism national public awareness programme.

Similarly, Ireland has reported on the issues facing Travellers and the progress made by the State in addressing these issues under the International Covenant on Civil and Political Rights, Article 27. Other commentators, besides Traveller groups such as Pavee Point and the Irish Traveller Movement, have interpreted this as an official recognition of Travellers as a minority ethnic group. This article states that *“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or use to their own language.”* In its report on the Council of Europe’s Framework Convention for the Protection of National Minorities the bulk of the report concerned Travellers, the issues facing them and the State’s response to these issues.

The report on Travellers included in the appendix to the draft CERD report describes Travellers in a way that is befitting a standard definition of an ethnic group. *“Irish Travellers (population 24,000) are an indigenous Irish community with a shared history of a nomadic way of life and cultural identity.”*

These inconsistencies make the State’s stance in its draft CERD report seem out of kilter with both the letter and the spirit of the CERD Convention. The Government appears to be implicitly contending that the definition of racial discrimination contained in this Convention does not include Travellers. The definition states *“the term racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”*.

The way forward

The NCCRI recognises there is a gulf between specialist and non-specialist usage of the term ‘ethnic’. For specialists it is an adjective derived from the noun ‘ethnicity’, similar conceptually to words such as ‘religious’, ‘national’ or ‘linguistic’. In popular usage, however, it implies not Western for example ‘ethnic food’.²

The tendency to reject Travellers as an ethnic group often comes from the popular usage of the term ethnic, rather from any scientific or researched view point. This is a position which NCCRI seeks to challenge and change.

It is difficult to see how international bodies such as the Committee overseeing the CERD Convention will not comment on the inconsistencies in the Irish Government’s position. The Government has moved from being ‘agnostic’ to being ‘atheistic’ on the question of viewing Travellers as an ethnic group without clear reasons why their position has

² Parekh, B (2000) Report of the Commission on the Future of Multi-Ethnic Britain

changed and what this will mean in practice. The current position has been perceived, rightly or wrongly as being symbolic of a broader hardening of attitudes towards Travellers.

The clearest way to show that this is not the case is for the government to change its position, to at the very least return to an agnostic position and preferably recognise Travellers as an ethnic group, and to now redouble its efforts to implement and update the recommendations of the Task Force on the Travelling Community. Clearer signals must be sent to the Traveller community of the Government's determination to address the inequalities they experience in their everyday lives and to recognise the distinct contribution Travellers make to the diversity that now characterises Irish society.