



Presentation by
Irish Human Rights Commission to

Oireachtas Joint Committee on Justice, Defence and Equality
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Recognition of Traveller Ethnicity

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It is with great pleasure that I make this presentation today on behalf of the Irish Human Rights Commission (IHRC), and we are most grateful to the Committee for affording us this opportunity.

Since its establishment the IHRC has expressed its concerns regarding the human rights of the Irish Traveller Community. This concern has been reflected through the IHRC's **policy work, litigation functions** and most prominently its Shadow Reports to international human rights bodies, including the Human Rights Council, the Committee on the Rights of the Child, and the Committee on the Elimination of Racial Discrimination.

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 IHRC first undertook a detailed consideration of the question of Traveller Ethnicity. This was in **response to the State's assertion** at the time that Travellers did not constitute an ethnic minority in the State.

A Discussion Paper was published by the IHRC. The Paper was a legal analysis of the recognition of Travellers as an ethnic minority against international human rights standards, relevant case law and legislation.

At that point the IHRC predicted, based on the precedents available, that the CERD Committee would indeed regard Travellers as an ethnic minority **when the State's Report** was examined. The IHRC was correct in this 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 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.

At the Council of Europe level the Advisory Committee on the Framework Convention for the Protection of National Minorities (the Advisory Committee) expressed 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:

... finalise the consideration of the proposed recognition of Travellers as an ethnic minority and to ensure, both de jure and de facto, the applicability of international and domestic non-discrimination and minority rights standards in relation to Travellers.

In January 2013 the IHRC, prompted by the renewed attention being focused on the issue by the State in the context of **Ireland's** Universal Periodic Review (UPR) before the Human Rights Council, published its most recent consideration on the question of recognition of Traveller Ethnicity. The IHRC Submission to Government welcomed the more open response of the State to the question. However, the IHRC 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 an elusive consensus amongst the Traveller Community and Traveller representative organisations as a possible prerequisite to recognition.

The IHRC's submission explores this position in detail and submits that the principle of self-identification as protected under CERD, and indeed similarly enshrined in the Framework Convention, was being misunderstood by the State, and that a universal form of self identification is not a necessary pre-requisite 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, nothing to do with opinion or consensus. The principle of self-identification pre-supposes 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 why such protection is considered necessary for vulnerable minorities.

It is in any event submitted that the Traveller community both self identify by reference to their shared history, culture, way of life, practice of nomadism, family ties, and traditions, and are identified by others in the same way. These are all irrefutable identifiers of an ethnic group.

Should the State recognise Traveller ethnicity?

The IHRC would submit that Traveller ethnicity is essentially a legal reality that the State is bound by, irrespective of any formal act of recognition.

Whether the State chooses to so recognise Travellers or not, 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 denying ethnicity, the State puts itself in the anomalous situation of denying ethnicity but not being able to deny the protections that flow from that status.

While there is a body of expert opinion that points to Travellers as being an ethnic minority, opinion that has been presented to this Committee in previous sessions, the State has never itself put forward any cogent reasons as to why it considers that Travellers do not satisfy the necessary criteria for recognition as an ethnic minority.

More positively, the IHRC sets out in its Submission why recognition of Traveller ethnicity will be of benefit to the Traveller Community itself, but also to the State and society in general.

How should the State “recognise” the ethnicity of Travellers?

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.

On the one hand, a statement of recognition could be made by the Taoiseach or the Minister for Justice on the record of Dáil Eireann **confirming the State’s acceptance of** the Irish Traveller Community as an ethnic group within the State.

At an international level the State could confirm to relevant international human rights bodies that it accepts that Travellers are an ethnic group under the relevant legal frameworks, and continue this practice through its State Reports as they arise.

At a legal level clarification in the law, such as the equality legislation, that Travellers are an ethnic minority could be a useful precedent, and would remove any doubt as regards the legal protection the State affords to this vulnerable community.

At a deeper level, it would be recommended that the State communicate its recognition to the Traveller community. Of course recognition must go beyond mere rhetoric, and **the State’s engagement with the Traveller community must be fully informed by its** human rights obligations regarding that community as an ethnic minority in the State, in seeking to ensure the human rights of Travellers, which the State consistently asserts that it seeks to achieve. At a practical level, **as pointed out in the IHRC’s submission**, this may require the State to consider carefully those aspects of law and policy that have a disproportionate negative impact on the Traveller community with a view to their removal.

Conclusion

The IHRC is presently anticipating its merger with its sister organisation the Equality Authority. We understand that new legislation is imminent and that the legislation may confer on the new Irish Human Rights and Equality Commission, a wider remit, including in relation to encouraging intercultural understanding, promoting tolerance and

acceptance of diversity in the State. At this juncture the IHRC respectfully urges the State itself to lead by example in this regard by finally recognising Traveller Ethnicity.