HUMAN RIGHTS COMMISSION

Travellers as an ethnic minority under the
Convention on the Elimination of Racial Discrimination

A Discussion Paper

24th March 2004
Explanatory Note

This discussion paper is part of an ongoing discussion between the Human Rights Commission and the Minister for Justice Equality and Law Reform on the question of Travellers as an ethnic minority under the Convention on the Elimination of all forms of Racial Discrimination (CERD).

On this issue the Minister is emphatic that the Government does not believe that Travellers are ethnically different from the majority of the Irish people. The Human Rights Commission disagrees and believes that the refusal to recognise Travellers as an ethnic minority for the purposes of CERD suggests a lack of understanding of the importance to Travellers of recognition of their culture and identity. It also, in the view of the Commission, raises concerns that sufficient weight may not be given in policy making to the need to respect and promote that culture, while the lack of recognition may place obstacles in the way of Travellers accessing all the protections of CERD and other international human rights conventions.

The Commission also believes that this lack of recognition may have implications for the application to Travellers of the EU Directive of June 2000 on equal treatment between Persons Irrespective of Racial or Ethnic Origin (the Race Directive).

This paper looks at the question of recognition of Travellers as an ethnic minority from a legal perspective in terms of relevant legislation and case law and the provisions of international human rights treaties and conventions. It does not deal with the cultural or sociological aspects of the question, which are covered elsewhere. The Commission hopes that this paper will help further understanding in this important area.

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Travellers as an ethnic minority under the Convention on the Elimination of Racial Discrimination

A Discussion Paper

This paper is prompted by the Government’s First National Report under the International Convention on the Elimination of Racial Discrimination (CERD), which states rather starkly that “[t]he 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”, and by the reply by the Minister for Justice, Equality and Law Reform to a recent letter from the President of the Human Rights Commission expressing concern about this.

In his reply (dated 6th February 2004) to the President’s letter, the Minister said: “However, the Government is not prepared to include in the [CERD] Report a statement it does not believe in, namely that Travellers are ethnically different from the majority of the Irish people”.

The Minister’s letter also states that “the Government is committed to applying all the protections afforded to ethnic minorities by the CERD equally to Travellers” and the Government’s CERD Report says the same. However, the Commission is concerned that the refusal to recognise Travellers as an ethnic minority for the purposes of the CERD Convention - as requested by Travellers’ organisations – suggests a lack of understanding of the importance to Travellers of recognition of their culture and identity. It also raises concerns that sufficient weight may not be given in policy making to the need to respect and promote that culture, while the lack of recognition may place obstacles in the way of Travellers accessing all the protections of CERD and other international human rights conventions.

The lack of recognition may also have implications for the application to Travellers of the EU Directive of June 2000 on Equal Treatment between Persons Irrespective of Racial or Ethnic Origin (the Race Directive).

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This paper looks at the question of the recognition of Travellers as an ethnic minority from a legal perspective in terms of relevant legislation and case law, and the provisions of international human rights treaties and conventions. It does not deal with the cultural or sociological aspects of the question which are covered elsewhere.

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What the CERD Convention Says

There may be some element of misunderstanding in this debate. Article 1.1 of the CERD Convention says:

“In this Convention, 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 an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.

The term “ethnic origin” is not further defined, though from the context it is clearly intended to mean something other than “race, colour, descent, or national ... origin”.

Accordingly, what is at issue here is not a group whose members are biologically different from others, or who have a different skin colour or come from another country. The term “ethnic origin” and related terms like ‘ethnic group’, or ‘ethnic minority’ have a particular meaning for the purposes of the CERD Convention and other related international instruments. What is meant is evidently a group that is liable to discrimination on the basis that it is different and distinct from the majority in a way that is similar to, but not the same as, groups whose skin colour is different or who are clearly of a different nationality. The terms ‘ethnic origin’, ‘ethnic group’ etc. are clearly intended to be used in a broad and flexible way to deal with groups who do not readily fit into the traditional categories of race and colour.

A number of countries with legal systems similar to ours have introduced legislation against racial discrimination similar to or modelled on the wording of the CERD Convention and their courts have had to interpret the terms ‘ethnic origin’ or ‘ethnic group’ for the purposes of that legislation. The case law that is most relevant to the Irish situation is from the UK.

Court Rulings

The UK’s Race Relations Act, 1976, which outlawed discrimination on racial grounds, followed closely the CERD Convention’s definition of racial discrimination. Section 3(1) of the Act stated that discrimination on “racial grounds” meant “any of the following grounds, namely colour, race, nationality or ethnic or national origins”.

In the case of Mandla v. Dowell Lee [1983] 2 A.C. 548, H.L.(E) the House of Lords had to consider the meaning of the terms “ethnic origins” and “ethnic group”. The case concerned a Sikh boy who was refused entry to a school near Birmingham because he wished to wear a turban in accordance with Sikh tradition. The headmaster denied that there was any racial discrimination involved because the school catered for other pupils of Indian origin. He argued that Sikhs were not a distinct racial group as envisaged by
the Race Relations Act. The case turned on whether Sikhs were a distinct group from other people who came from the Punjab region of India and who did not differ from them in colour, “race” as traditionally understood, or language.

Lord Frazer, giving the leading judgment in the House of Lords, said:

“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; (7) being a minority or being an oppressed or a dominant group within a larger community ...”

Using these criteria, 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”.

In his judgment, Lord Frazer had in turn drawn upon a decision of the New Zealand Court of Appeal interpreting the term “ethnic ... origins” in their Race Relations Act, 1971, which had been drafted to meet New Zealand’s obligations under CERD and mirrored the wording of the Convention. In that case, entitled *King-Ansell v. Police* [1979] 2 N.Z.L.R 531, the Court had to decide whether Jews constituted an “ethnic group” for the purposes of the Act.

Holding that Jews were covered by the provisions of the Act, Mr Justice Richardson had said:

“The real test is whether the individuals or the group regard themselves and are regarded by others in the community as having a particular historical identity in terms of their colour or their racial, national or ethnic origins. That must be based on a belief shared by members of the group.

“[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 an historically determined social identity in their own eyes and in the eyes of those 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 test developed in Mandla v. Dowell Lee became the standard one used by the English courts to determine whether other groups could be sufficiently distinguished in terms of their “ethnic origins” to qualify as an ethnic group or even a “racial group”, i.e. “a group of persons defined by reference to colour, race nationality or ethnic or national origins (emphasis added)” (Section 3(1) of the 1976 Act), for the purposes of the Race Relations Act. In Commission for Racial Equality v. Dutton [1989] 2WLR 17, which dealt with the case of a London publican displaying a sign saying “No travellers” in his window, the Court of Appeal had to determine whether English gypsies constituted a “racial group” under the Act. The claim was one of indirect discrimination because, while the sign did not specify gypsies, it particularly affected a group of gypsy families camped nearby. The gypsies in question were part of a community who, though of Romany origin, had lived in England for many generations, rather than recently arrived members of the Roma community.

Lord Justice Nicholls said that while gypsies “are no longer derived from what in biological terms, is a common racial stock ... that of itself does not prevent them from being a racial group as widely defined in the Act”. He went on to say: “The material provision in the Act of 1976 is concerned with ethnic origins, and ‘ethnic’ is not used in that Act in a strictly biological or racial sense”. Applying the Mandla v. Dowell Lee criteria, he held 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”.

Lord Justice Taylor, concurring, said that gypsies had “a long shared history ... distinguishing [them] from other groups” and “a cultural tradition of their own including family and social customs and manners”.

Following the Dutton case, there have been a number of cases in the UK courts and in the European Court of Human Rights at Strasbourg dealing with the treatment of gypsies in the UK. In Chapman v. the United Kingdom, Application No. 0002723895, the Strasbourg Court considered a complaint by an English gypsy against a refusal to grant her planning permission to live in a caravan on her own land. In its judgment on 18th January 2001, the Court accepted that gypsies constituted a distinct ethnic group in Britain and said: “[T]he Applicant’s occupation of her caravan is an integral part of her ethnic identity as a gypsy, reflecting the long tradition of that minority of following a travelling lifestyle”. On the facts of the particular case, however, the Court found no violation of the European Convention on Human Rights.

In Hallam v. Cheltenham Borough Council [2001] UKHL 15, the House of Lords held that a local council’s refusal to let public rooms to a gypsy family for a wedding
amounted to discrimination on racial grounds for the purposes of the Race Relations Act. And as recently as May 2003, the House of Lords, when dealing with a number of Planning Act cases involving illegally encamped gypsies, said that one of the matters a court should take into account when considering an application for an injunction, was “the retention of his [the gypsy Respondent’s] ethnic identity” Wrexham Borough Council v. Berry [2003] UKHL 26, at paragraph 41.


With hindsight, it may seem obvious that each of these groups, Jews in New Zealand or Australia, Sikhs in Birmingham and gypsies in London or Cheltenham, constituted ethnic minorities, but each of these cases was vigorously contested at the time.

Eventually, an English court was called on to decide whether Irish Travellers could also be considered an ethnic minority for the purposes of the Race Relations Act.

In the summer of 2000, in the case of O’Leary & Others v. Allied Domecq & Others, unreported 29 August 2000, the Central London County Court was dealing with a claim by a number of Irish Travellers 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. It was not contended that the reason why the Plaintiffs had been discriminated against was because they were Irish since one of the offending pubs catered for an almost exclusively Irish clientele.

It was agreed that the court should decide as a preliminary issue whether the Travellers constituted a “separate ethnic group” for the purposes of the 1976 Act. Judge Goldstein and two assessors sat for six days listening to expert evidence and then applied the Mandla v. Dowell Lee criteria. They held that the Travellers met the two essential conditions laid down in that case, (1) possessing 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 (2) having 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.

As for the non-essential criteria set out in the Mandla judgment, the court held that Irish Travellers did share “a common geographical origin, or descent from a small number of
common ancestors”. They had a common language, namely Cant, Gammon or Shelta, whether or not it was widely used any more. While they did not have a common written literature, they did have a common oral tradition. And Judge Goldstein said: “[O]ne of the few things that are actually conceded, they are undoubtedly a group which suffers disadvantage, discrimination and prejudice”.

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 judgment on the preliminary issue was not appealed and the cases were subsequently settled.

Judge Goldstein had also pointed to the anomaly that would arise if gypsies were covered by the Race Relations Act, and Irish Travellers were not. While the two groups were not synonymous, he said, they shared many common characteristics. And as we have seen, the British courts had already quite firmly established that gypsies constituted an ethnic group for the purposes of the Race Relations Act.

In summary, the UK courts, construing the Race Relations Act, 1976, whose definition of “racial grounds” is very similar to the wording of the CERD Convention, have held that the terms “ethnic origins”, “ethnic group” or “ethnic minority” 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, yet have a distinct cultural identity and a shared but distinct history. The UK courts have also developed a set of criteria for determining whether a group fits into this category and have very clearly and definitively held that English or British gypsies do.

Using the same criteria, the Central London County Court has held that Irish Travellers also constitute an ethnic minority for the purposes of the Race Relations Act. That decision has stood unchallenged since August 2000 and in practice the UK government and public authorities now accept that position.

The UK government’s 17th Report under the CERD Convention, submitted in 2002, stated: “It should be noted that Gypsies (Roma) and Irish Travellers, like other racial groups, are protected under the Race Relations Act...” The CERD Committee in turn, in its comments on the UK Report, issued in August 2003, expressed concern about the
discrimination faced by “Roma/Gypsies/Travellers”, clearly equating Travellers with Roma or Gypsies for the purposes of the Convention.

The Minister for Justice, Equality and Law Reform mentioned recently (at a session of the Oireachtas Sub-Committee on Human Rights on 11 March 2004) that the UK courts’ and government’s recognition extends only to Irish Travellers, suggesting that the key factor might be their Irish origin. In fact, the Court in the Allied Domecq case went some way to meet that point by noting that one of the pubs which had refused entry to the Travellers in that case was itself patronised by “settled” Irish people so that the discrimination complained about was not based on the complainants’ Irishness. In fact, the Court noted that if it had been based on the complainants’ Irish origins, it would have been a straightforward issue of discrimination on grounds of nationality or race.

The fact that the Travellers were of Irish origin may have made it easier for the court in the Allied Domecq case to recognise their distinctiveness. However, the history of the jurisprudence in this area indicates that while the first “ethnic groups” to be recognised may be more “exotic” ones, like the Sikhs in Birmingham, the principles developed in such cases can then be applied to less visually distinctive groups and ones which are so familiar that it is hard to think of them as distinct.

**The position in Northern Ireland**

The courts in Northern Ireland would probably have had to follow the lead of the Court of Appeal for England and Wales and the House of Lords in this area, but the matter has been put beyond dispute 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) says: “In this Order ‘racial group’ ... includes the Irish Traveller community”.

And Section 75(5) of the Northern Ireland Act, 1998 says: “In this section ... ‘racial group’ has the same meaning as in the Race Relations (Northern Ireland) Order 1997”.

In the case of Northern Ireland it is clearly not their Irishness that leads to Travellers being treated as a distinctive ‘ethnic’ group; it is the fact of their being Travellers.
The International Conventions

The International Convention on the Elimination of Racial Discrimination (CERD)

Article 1.1 of the CERD Convention defines “racial discrimination” as “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 an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”. Article 5 requires states that are parties to the Convention to prohibit and eliminate racial discrimination.

The term “ethnic origin” is not further defined in the CERD Convention, but in its decisions on complaints made to it under Article 14 of the Convention, the CERD Committee has made clear that it regards Roma as an ethnic minority for the purposes of the Convention. In Koptova v. Slovakia (13/1998) the CERD Committee upheld a complaint against Slovakia over local councils barring Roma families from living in their areas and over subsequent attacks on other Roma families. And in Lacko v. Slovakia (11/1998), while it did not find a violation of the Convention, the Committee recommended stronger action by the Slovak authorities to stop discrimination against Roma in bars and restaurants.

In 2000 the CERD Committee also adopted General Recommendation 27 (these General Recommendations give guidance on the interpretation and implementation of the Convention) on Discrimination against Roma. This included, inter alia, recommendations to governments to prevent discrimination by local authorities in relation to accommodation, or discrimination by hotels, restaurants etc. Paragraph 32, on the provision of camping sites also contained a reference to Travellers. It called on governments “[t]o take the necessary measures, as appropriate, for offering Roma nomadic groups or Travellers camping places for their caravans, with all necessary facilities…”

As mentioned above, the CERD Committee in its comments on the UK’s periodic reports under the Convention has several times referred to discrimination against “Roma/Gypsies/Travellers”, indicating that it regards Travellers as having a similar status to Roma or Gypsies. There seems little doubt that when reviewing the Irish Report, the CERD Committee is likely to regard Travellers as an ethnic group who are covered by the provisions of the Convention.
The bodies which monitor the other main United Nations human rights treaties tend to adopt and follow the CERD Committee’s definitions and decisions in relation to racial discrimination.

**The European Framework Convention on National Minorities**

The Framework Convention on National Minorities does not contain a definition of what constitutes a national minority but Article 5 refers to maintaining and developing the culture and identity of members of national minorities, including their religion, language, traditions and cultural heritage.

The Government appears to have accepted in practice that Travellers come within the ambit of the Framework Convention as the bulk of Ireland’s first Report under that Convention, submitted in 2001, deals with the position of Travellers and the Report contains a description of Travellers which conforms very closely to the *Mandla v. Dowell Lee* criteria (see below).

**The European Commission against Racism and Intolerance (ECRI)**

ECRI, which functions by sending missions to visit the member states of the Council of Europe, has not set out a definition of racism, or of racial or ethnic groups, but one of its first General Policy Recommendations concerned “Combating Racism and Intolerance against Roma/Gypsies” (General Policy Recommendation No. 3, adopted in March 1998) and included a recommendation to governments “to ensure that the questions relating to ‘travelling’ within a country, in particular regulations concerning residence and town planning, are solved in a way which does not hinder the way of life of the persons concerned”.

ECRI’s Second Report on Ireland, issued in June 2001, devoted considerable space to the position of Travellers under the heading: “Issues of Particular Concern”. It described Travellers as “an indigenous minority group”, stating that that was how they were characterised by the “Irish authorities” (Footnote 6 to paragraph 64), and dealt with discrimination and exclusion of Travellers within the context of racism and intolerance.

**The EU Race Directive**

The EU Directive on Equal Treatment Irrespective of Racial or Ethnic Origin, adopted on 29 June 2000, which must be transposed into national law by the member states, prohibits direct or indirect discrimination “based on racial or ethnic origin”. Once again these terms are not defined, but it is clear that “ethnic origin” is intended to convey something different and distinct from “racial ... origin”. Moreover, since the Directive does not cover differences of treatment based on nationality, the term ‘ethnic origin’ would appear to refer to groups whose identity is distinguished from the majority population by virtue of their culture, tradition and way of life, rather than ‘race’ in the traditional sense, or nationality.
Ireland’s Position

Domestic law:

The State was slow to adopt legislation specifically outlawing racial discrimination and delayed ratifying the CERD Convention until it had done so. That legislation, when adopted, was clearly influenced by the Convention, but the Employment Equality Act, 1998 avoided the issue of whether Travellers came within the CERD definition of racial discrimination. It prohibited discrimination on the basis of “race, colour, nationality, or ethnic or national origins” and then separately prohibited discrimination on the basis of membership of “the traveller community” (Sections 6(2) (h) and (i) of the 1998 Act). The “traveller community” was not defined.

The Equal Status Act, 2000 repeated this solution but included a definition of the “Traveller community” which was virtually identical to the definition of the “Irish Traveller community” in the Race Relations (Northern Ireland) Order, 1997. That definition had recognised Travellers as a “racial group” for the purposes of the Order (see above) and was, of course, based on the test developed in the Mandla v. Dowell Lee case.

The definition in the Equal Status Act (Section 2) is:

“’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, this has resulted in the anomalous situation where Travellers, who are identically defined in both jurisdictions, are regarded as a “racial group” on one side of the Irish Border but not on the other. This becomes even more anomalous where Travellers on either side of the Border are related to each other or where the same family moves from one jurisdiction to the other.

The International Conventions

Irish reports under the international human rights conventions over the last decade or so have had to deal with the position of Travellers as probably the most disadvantaged and marginalised group in Irish society. They have struggled with how to characterise Travellers in terms of the language of the conventions but have been very reluctant to recognise them as an ‘ethnic group’.
Ireland’s first Report under the International Covenant on Civil and Political Rights, submitted in 1992, referred to the “travelling community” and noted that some Travellers’ bodies claimed that they constituted a distinct ethnic group. The Report queried the basis for this, stating that Travellers were not a distinct group in terms of religion, language or race. It did not mention the question of ‘ethnic origin’ but stated that Travellers were entitled to all the rights protected under the Covenant. It said:

“All allegations are sometimes made of discrimination against the travelling community. This is a community whose members, like the gypsies in other countries, used to travel from place to place in pursuit of various traditional callings... Nowadays travellers tend to live in caravans close to the major cities. Some of the bodies representing travellers claim that members of the community constitute a distinct ethnic group. The basis of this claim is not clear. Travellers do not constitute a distinct group from the population as a whole in religion, language or race. They are not a Romany or gypsy people. However, members of the community are undoubtedly entitled to all the rights under the covenant and not to be discriminated against as a group and it does not appear to be of particular significance whether their rights relate to their alleged status as an ethnic group or to their social group”.

In 1996 Ireland’s Report under the Convention on the Rights of the Child noted the claim that Travellers were an ethnic group but did not comment on it one way or the other. A similar approach was adopted in Ireland’s Report under the International Covenant on Economic, Social and Cultural Rights in the same year.

By 2001, the government’s First Report under the European Framework Convention on National Minorities described Travellers in terms that brought them clearly within the criteria used in Mandla v. Dowell Lee. It denied that they formed a distinct group in terms of religion, language or race, but said nothing about ethnic origin and went on to talk about their distinctive culture and long shared history. In an evident attempt to accord greater recognition to Travellers’ distinct identity and perhaps to move closer towards the UK and Northern Ireland position – and the language of the CERD Convention itself - the Report described Travellers as “an indigenous minority who have been part of Irish society for centuries”. It said:

“While Travellers are not a Gypsy or Roma people, their long shared history, cultural values, language (Cant), customs and traditions make them a self-defined group, and one which is recognisable and distinct. The Traveller community is one whose members, like the Gypsies in other countries, travelled from place to place in pursuit of various different traditional vocations. Despite their nomadic origins and tendencies, the majority of the Traveller community now live in towns and cities.

“Their culture and way of life, of which nomadism is an important factor, distinguishes Travellers from the sedentary (settled) population. While Travellers do not constitute a distinct group from the population as a whole in terms of
religion, language or race, they are, however, an indigenous minority who have been part of Irish society for centuries. The Government fully accepts the right of Travellers to their cultural identity, regardless of whether they may be described as an ethnic group or national minority”.

Indeed, at one point, on Page 47, the Report actually refers to “Travellers and other minority ethnic groups” and the great bulk of the Report is devoted to the position of Travellers in Ireland, thus effectively acknowledging that they do come within the ambit of the Framework Convention. The conclusions on the Irish Report by the monitoring committee for the Framework Convention, which will presumably include their comments on the position of Travellers, have not been released as yet.

As noted above, the Second Report on Ireland by ECRI, which was published in June 2001, stated that the Irish authorities had described Travellers as an “indigenous minority”.

In this context, the wording in Ireland’s First Report under the CERD Convention (due to be submitted shortly) represents a surprising and somewhat disturbing change in direction. For the first time it explicitly denies that Travellers constitute a distinct group in terms of “ethnic origin”, as well as “race, colour, descent or national ... origin”. This would appear to take Travellers outside the ambit of the definition of racial discrimination in the Convention, though the Report goes on, somewhat inconsistently, to say that the Government is committed to extending to Travellers all the protections afforded by CERD.

The Report states at Paragraph 28:

“[I]t should be noted that some of the bodies representing Travellers claim that members of the community constitute a distinct ethnic group. The exact basis for this claim is unclear. However, the Government of Ireland accepts the right of Travellers to their cultural identity, regardless of whether it may be properly described as an ethnic group and is committed to applying all the protections afforded to ethnic minorities by the CERD equally to Travellers ... 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”.

An earlier draft of that paragraph had gone on to say that the Government was aware that “members of the Traveller community suffer discrimination on the basis of their social origin (emphasis added)”, which seemed to negate the recognition earlier in the same paragraph of Travellers’ cultural identity, and which would seem to have taken Travellers clearly outside the ambit of CERD. This reference was removed after protests by Travellers groups and other NGOs. A little ironically, but perhaps recognising the likely view of the CERD Committee on this issue, the Government’s Report goes on to devote substantial space to dealing with the position and treatment of Travellers in the State.
Conclusion

Ireland has ratified the CERD Convention and is bound by its provisions to prohibit and eliminate racial discrimination as defined by Article 1.1 of the Convention. That includes discrimination on the grounds of “ethnic origin”.

The Convention does not define the term “ethnic origin” but the UK courts, interpreting the Race Relations Act, 1976, whose definition of discrimination reflects the language of the Convention, have developed a set of criteria for determining what constitutes an ethnic minority, or a group with a distinct ethnic origin. Similar criteria have been developed in other common law countries which have also ratified the CERD Convention (cf. King-Ansell v. Police in New Zealand and Jones v. Scully in Australia). And the European Court of Human Rights appears to have adopted similar criteria in dealing with the situation of English gypsies (Chapman v. the UK).

Irish Travellers fulfil the criteria developed in the leading UK case of Mandla v. Dowell Lee and a UK court has held, in a so far unchallenged decision (O’Leary v. Allied Domecq), that such Travellers constitute an ethnic minority for the purposes of the Race Relations Act. The UK government has gone on, in its 2002 Report under the CERD Convention, to say that “Gypsies (Roma) and Irish Travellers, like other racial groups, are protected under the Race Relations Act...” And in Northern Ireland, the UK government has gone further by introducing legislation that specifically recognises Travellers as a “racial group” for the purposes of anti-discrimination protections (Race Relations (Northern Ireland) Order, 1997).

The CERD Committee, when reviewing UK Reports, has treated Irish Travellers as coming within the Convention’s definition of racial discrimination – evidently on the basis of a distinct ethnic origin – linking them with Roma/Gypsies, and the Council of Europe’s Commission on Racism and Intolerance (ECRI) has taken a similar approach.

The EU Racism Directive specifically includes the term “ethnic origin” as well as “racial origin” in its title and it seems likely that the European institutions would follow the example of the UK courts and the CERD Committee in their interpretation of that term and its application to Travellers. The Racism Directive must, of course, be transposed into Irish law and we are already late in doing so.

The Government appears to be adopting an unnecessarily narrow, literalist and defensive attitude on this issue and to have recently hardened its position. To recognise Travellers as an ethnic group or ethnic minority for the purposes of CERD and other international conventions is not to concede some fundamental political principle or to state that Travellers are a biologically separate race from the rest of the Irish population.
It does have certain wider implications, however, notably recognition and respect for Travellers’ cultural identity, and the obligation to ensure that that respect is reflected in policy decisions by Government and public bodies. But that policy was recommended as long ago as 1995 in the Report of the Task Force on the Traveller Community when it said that “the distinct culture and identity of the Traveller community [should] be recognised and taken into account” and added that Travellers’ culture included “nomadism, the importance of the extended family, the Traveller language, and the organisation of the Traveller economy”. The recommendations of the Task Force were broadly accepted by the Government of the day and succeeding governments. In any event, the Government’s position as reflected in its CERD Report may be overtaken fairly shortly by the requirements of EU legislation.

In the section of the CERD Report that records NGO concerns about the characterisation of Travellers, the Government says (at Paragraph 405): “To define Travellers as an ethnic minority would not entitle Travellers to any additional rights or protections”.

In fact, there are some areas where this may not be correct. Ireland has declared itself bound by Article 14 of the CERD Convention, which allows individuals to complain to the CERD Committee about violations of their rights under the Convention – rather like taking a case to the European Court of Human Rights or the UN Human Rights Committee. But if the Government does not recognise that discrimination against Travellers constitutes racial discrimination for the purposes of the Convention, then they will presumably claim that any complaints made by Travellers to the CERD Committee are inadmissible.

Such an argument would either deny Travellers access to one of the important protections afforded by CERD or result in an embarrassing finding against the Government.

At home, discrimination against Travellers is prohibited by the Employment Equality Act and the Equal Status Act, but it is by no means clear that this extends to a positive requirement for public authorities to take account of the distinct identity, culture and traditions of Travellers when making decisions that affect them. This is particularly important in the field of accommodation but it can be a significant factor in other areas like education as well.

The CERD Convention not only prohibits racial discrimination but also at Article 2.2 it requires governments to take positive action to assist members of disadvantaged “racial groups”. It is not clear that the Government would regard itself as bound by the Convention to take such measures in relation to Travellers or that it would regard Travellers as entitled to complain to the CERD Committee about a failure to take such measures.

And, as indicated above, the refusal to recognise Travellers as a group with a distinct ethnic origin suggests that the Government might claim that they are not covered by the EU Race Directive, which appears to provide some protections additional to existing anti-discrimination law. At the least this could lead to embarrassing litigation before the
European Court of Justice to determine whether Travellers are indeed covered by the Directive.

Finally, there is a broader political argument that recognition as an ethnic minority, at least for the purposes of CERD and other international conventions, is important to the morale and self-esteem of Travellers whom the Government do acknowledge to be probably the most marginalised and disadvantaged group in Irish society. It is also important to developing respect for Travellers’ culture and identity by public bodies – and indeed the general public - throughout the State.

For all these reasons, it is suggested that the Government should recognise Travellers as an ethnic minority, or a group with distinct ethnic origins, at least for the purposes of the CERD Convention, the Framework Convention on National Minorities and the EU Race Directive and the protections and entitlements that spring from them.