



## **Tithe an Oireachtais**

An Comhchoiste um Dhlí agus Ceart agus Comhionannas

Tuarascáil ar Aitheantas d'Eitneacht an Lucht Siúil

Eanáir 2017

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## **Houses of the Oireachtas**

Joint Committee on Justice and Equality

Report on the Recognition of Traveller Ethnicity

January 2017



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## Chairman's Preface

Back in 2014, our predecessor Committee of the 31<sup>st</sup> Dáil published a "Report on the Recognition of Traveller Ethnicity". Its key recommendation was that this State recognise the ethnicity of the Travelling community, and that steps be taken to implement any necessary legislative change to reflect this.

Despite the recommendations of the previous Committee, and of several other bodies - both international and domestic - 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 current Joint Committee was very keen that this issue would remain firmly on the political agenda. It is given greater poignancy by the Carrickmines tragedy of 2015 that resulted in the death of ten members of the Traveller community.

We undertook to supplement and reinforce the valuable work and recommendations put forward by the previous Committee by conducting our own hearings and adding this report to the body of work already in place on the recognition of Traveller ethnicity.

The Joint Committee examined these matters in detail over the course of four engagements with a range of relevant stakeholders and experts, and the evidence in favour of the recognition of Traveller ethnicity was overwhelming.

A copy of this report and recommendations has been sent to the Tánaiste and Minister for Justice and Equality. The Committee looks forward, with confidence, to an early pronouncement on this important recognition.

I would like to express my gratitude on behalf of the Committee to all the witnesses who attended our public hearings to give evidence. Finally, I also wish to thank the staff of the Committee Secretariat who assisted in the preparation of this report. Go raibh maith agaibh.



A handwritten signature in black ink, which appears to read "Caoimhghín Ó Caoláin".

Caoimhghín Ó Caoláin T.D.  
Chairman - January 2017





Members of the Joint Committee with Ms Emily Logan, Chief Commissioner, Irish Human Rights & Equality Commission and Mr David Joyce BL, Commission Member.



Members of the Joint Committee with representatives of the Irish Traveller Movement – Mr Bernard Joyce, Director, and Ms Jacinta Brack, Public Relations and Political Coordinator and Ms Maria Joyce, Coordinator of the National Traveller Women's Forum.



Members of the Joint Committee with Mr Martin Collins and Ms Ronnie Fay, Co-Directors of Pavée Point Traveller and Roma Centre; Mr Thomas McCann, Minceirs Whiden; Ms Anastasia Crickley, Chairperson, UN Committee for the Elimination of Racial Discrimination; and Dr Robbie McVeigh, Academic.



# Recognition of Traveller Ethnicity

## Introduction

In April 2014, the Joint Committee on Justice, Defence and Equality, in the course of the 31st Dáil, published a "Report on the Recognition of Traveller Ethnicity". Its key recommendation was that either the Taoiseach or Minister for Justice would make a statement to Dáil Éireann confirming State recognition of the ethnicity of the Irish Traveller community, that the Government would then inform relevant international bodies of that decision, and that a time-limited dialogue would be undertaken with Traveller representative groups about possible new legislation, or amendments to existing legislation, then required.

The current Joint Committee was very keen that the work of its predecessor Committee would not simply fall into abeyance, and that this important issue would remain firmly on the political agenda. As such, it undertook to prepare its own report on the recognition of Traveller ethnicity and to make recommendations to the Tánaiste and Minister for Justice and Equality, Frances Fitzgerald, and her Department. This report is intended to supplement and reinforce the valuable work and recommendations put forward by the previous Committee.

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

Despite the recommendations of the previous Committee, and of several other bodies - both international and domestic - 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.

## Background

As noted in the 2014 report of the previous Committee, 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) examine the economic, educational, health and social problems inherent in their way of life;
- (3) 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; and
  - (c) pending such absorption, to reduce to a minimum the disadvantage to themselves and to the community resulting from their itinerant habits; and
- (4) To make recommendations.

In its report, the Commission concluded that:

“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.”

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. The approach and recommendations found in the 1963 Report of the Commission on Itinerancy remain deeply offensive to Travellers and are largely rejected today.

It is clear that the national policy debate has moved on considerably from the tone and conclusions of the 1963 report. This was evidenced by the introduction of a definition of Travellers in the Equal Status Acts that effectively recognises Traveller ethnicity. It was further reflected in the 2014 report of the Joint Committee on Justice, Defence and Equality, and its strong recommendation that Traveller ethnicity receive official recognition.

More recently, and subsequent to this Joint Committee’s deliberations on the issue, the Taoiseach has indicated that the Government will begin to take steps towards the recognition of Traveller ethnicity in 2017. To that end, the Taoiseach has requested the Minister of State at the Department of Justice and Equality to prepare a report for Government on the question of recognising Traveller ethnicity.

## The Case for a Distinct Traveller Ethnicity

In the seminal case of *Mandla v Dowell Lee* [1983], the British House of Lords considered the meaning of the term "ethnic group" within the meaning of the 1976 Race Relations Act. Lord Fraser identified two characteristics as being essential for a group to constitute an ethnic group:

- (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; and
- (2) A cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance.

In the subsequent case of *O'Leary & Others v Punch Retail & Others* (Westminster County Court, 29 August 2000, unreported), the issue arose as to whether Irish Travellers are a separate ethnic group entitled to the same protection under the Race Relations Act as other ethnic minorities in Britain. Eight travellers claimed racial discrimination against five London pubs they said refused to serve them because of their ethnic origin. Judge Goldstein of Central London county court concluded that Irish travellers had a shared history stretching back to the mid 19th century and should be given protection as an "ethnic group".

In Northern Ireland, Travellers are specifically recognised as a distinct racial group by virtue of Article 5(2)(a) of the Race Relations (Northern Ireland) Order 1997:

"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 ..."

Similarly in Scotland, The Equality Act 2010 provides the legislative framework which protects people (such as Gypsy/Travellers) who are recognised as a distinct ethnic group from being discriminated against on the grounds of ethnicity.

In her evidence submitted to the Joint Committee, Ms Emily Logan, Chief Commissioner of the Irish Human Rights and Equality Commission, contended that "the recognition of Travellers as a distinct ethnic group is not in doubt":

"The State is bound by the international consensus that self-determination forms the basis of a person identifying as belonging to a particular ethnic or racial group. International bodies have historically and continue to recognise the Traveller community as an ethnic minority and have consistently recommended that the Irish State should do likewise."

She further noted that *de facto* recognition of Traveller ethnicity is already enshrined in our equality legislation. The definition of 'Travellers' adopted by the Oireachtas for the purpose of the Equal Status Acts and Employment Equality Acts (2000-2015) 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."

Implicit recognition is also evident in other contexts, such as the inclusion of Travellers as a specific group for the purposes of the Council of Europe Framework Convention for Protection of National Minorities, and the State's reports to the United Nations at the time of its examinations under the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and under the International Covenant for the Elimination of all forms of Racial Discrimination (CERD).

Against this backdrop, Ms Logan questioned the logic of the Irish State's ongoing refusal to recognise Traveller ethnicity: "As recommended by the predecessor to this Committee in its 2014 Report on the Recognition of Traveller Ethnicity: 'it is no longer tenable for this State to deny Traveller ethnicity'."

The international legal dimension was further elaborated upon by Anastasia Crickley, Chairperson of the UN Committee for the Elimination of Racial Discrimination. The International Convention on the Elimination of all forms of Racial Discrimination (ICERD), which in 2015 marked 50 years since adoption, is the first UN Human Rights Treaty after the Universal Declaration of Human Rights. The 177 countries globally that have ratified the ICERD agree to report on progress and receive feedback and recommendations every four years from the independent Committee. Ireland ratified the Convention in 2000.

Ms Crickley noted that CERD actively supports the widely held international consensus regarding the rights of people to identify as members of particular ethnic groups and has called on states to acknowledge this self identification. Its General Recommendation 27 furthermore recognises and seeks remedies for the particular discrimination faced by Roma and Travellers, a discrimination which can and often does include identity denial:

"The Concluding Observations of CERD on Ireland, alongside those of a number of other UN Treaty Bodies and the Reports of the Working Groups on Ireland's two Universal Periodic Reviews (of the state of human rights in Ireland) have consistently recognized and consistently recommended that the Irish state should do likewise. In 2011 we called on Ireland, recalling our General Recommendation 8, to pay particular attention to self identification as a critical factor in the identification and conceptualisation of Travellers as an ethnic minority group. We recommended that the state should continue to engage with the Traveller community and work concretely towards recognizing Travellers as an ethnic group."

According to Maria Joyce of the National Traveller Women's Forum, Travellers have a shared history, culture and language, and their own customs and traditions which are recognisable and distinct. They share both of the essential characteristics of an ethnic group identified by Lord Frazer in the *Mandla* case: "We self identify as an ethnic group, and we are seen as a separate group by others."

From an academic perspective, Robbie McVeigh, in his evidence to the Committee, explored in more depth the issue of Travellers and ethnic identity. He argued that all the elements that make Travellers an ethnic group in the UK – including the 'essential characteristics' of an ethnic group - 'a long shared history' and a 'cultural tradition of its own' - hold in the 26 counties, and all the evidence suggests that there is no good reason for Traveller ethnicity not be recognised here:

" ... in all the time I have been working on this issue, there hasn't been a substantive case made against Traveller ethnicity ... [T]his reality suggests that the continued prevarication is a political act based on assertion rather than an examination of the evidence. It is not a position which stands up to legal or sociological scrutiny. Indeed, it is intellectually frustrating that the case against Traveller ethnicity is so rarely and so poorly made. From this perspective, the ongoing prevarication on Traveller ethnicity looks particularly ill-judged."

Pavee Point, in its submission, contended that the Government position on Traveller ethnicity is also contradictory and confusing to many outside observers. There are numerous examples, it states, of stated Government policy recognising Travellers as an ethnic group in all but name, most notably the definition of Travellers contained in the Equal Status Act: "While the question of what constitutes an ethnic group has not been defined in Irish Law the language used to define Travellers under the Equal Status Act is virtually identical to, and is clearly drawn from, the definitions of what constitutes an ethnic group under British Law."

## Benefits of Recognition

A number of witnesses and Members in the course of the hearings took issue with the idea that recognition of Traveller ethnicity would be a mere symbolic or tokenistic gesture with no real practical effect or consequences.

Emily Logan of the Irish Human Rights and Equality Commission argued that recognition of Traveller ethnicity can have an impact on official thinking and on how Government policies and decisions impact upon the Travelling community:

“The negative impact of non-recognition on the engagement between the Traveller community and State is unnecessary. With the unequivocal recognition of a distinct culture and identity, we can better anticipate and respond to the needs of the Traveller community. We heard in late 2015, in the political debates following the Carrickmines tragedy, how local authorities had not even drawn down monies allocated for Traveller accommodation. It is perhaps more useful now to think about how recognition will be the catalyst for a rethink of how we spend public money on policies affecting Travellers, how priorities should be reconsidered in a new light.

We can build on a strong foundation of equality of standing in the context of the relationship between the Traveller and settled communities. From that starting point, the issues which are important to our society can begin to be discussed in a more meaningful and mutually respectful context. With that, we can continue the work of understanding what needs to change in law and policy to support members of the Travelling community, for example, in accessing education, in accessing culturally-appropriate and safe accommodation and in accessing healthcare, amongst other priority areas.

Respect for Travellers’ cultural identity must be reflected in Government policy decisions. But how can this happen in the absence of recognition of Traveller ethnicity? It is the Commission’s position that it cannot.”

There continues to be a strong political argument in favour of recognition, as the first, albeit very significant and symbolic step, in a longer conversation, according to Ms Logan. The recognition of Traveller ethnicity in Ireland must be placed within the broader international context of discussion of ‘others’, ‘outsiders’ and ‘division’: “This is an opportunity for us to show our national political leadership, and set ourselves as a standard bearer, against those who would seek to hold back progress towards equality and human rights provision.”

On a more immediate and practical level, Ms Logan noted how, following the Carrickmines tragedy in 2015, it emerged in the course of political debate that several local authorities had not even drawn down moneys allocated for Traveller accommodation: “It may now be more useful to think about how recognition will be the catalyst for a rethink of how we spend public money on policies affecting Travellers and how priorities should be considered in a new light.”

On behalf of the Irish Traveller Movement, Mr Bernard Joyce outlined what it would mean to him personally to have his identity recognised. He stressed that it would enhance his sense of pride in being part of Irish society rather than diminish it:

"Having my identity recognised, defined and included, would enhance my pride of place in Irish society, my sense of being part of – rather than separate to. What we seek from the Irish state is an acknowledgment that our view of ourselves as a community is valid, and should be recognised as such. Fundamentally, it is about respect and inclusion. Ethnicity is not the same as race, nationality or place of birth, and by recognising Traveller ethnicity won't make us less Irish, it will however acknowledge our dual identity of being - both Irish and Traveller, similar to Irish Americans, African Americans, etc."

He further explained how Travellers and other ethnic minorities can internalise a sense of oppression, with terrible consequences for their communities:

"One particular advantage to ethnicity recognition is the opportunity to enhance community esteem and address internalised oppression. Internalised oppression which supports the notion that the majority community is right, superior and the standard, leads to poor self-image, low self-esteem, a lack of pride in one's cultural identity, stress, depression and in some cases alcohol and drug abuse. It can cause low expectations both of ourselves and of our community. This sadly is not unique to us, other minority groups across the globe share its impact on the wellbeing of their communities. However, despite the difficulties faced by our community, the crisis to our mental and social well-being and the vulnerabilities threatening our young people, as a community we still attach pride to being Traveller."

He argued that recognition of their ethnicity would have both symbolic and practical benefits for Travellers. Recognising their minority ethnic status means that they would be automatically included in anti-racism and integration policies and initiatives: "Our desire is to be valued for the people we are and to be elevated by the State bringing about a positive step on the journey of re righting the ill effects of our marginalisation. It also creates the opportunity for further collaboration and an improved trust between the state and Travellers. That recognition however is not a gift to be bestowed by the State or by others, our ethnicity without question is our unique identity. Our desire for acknowledgement reflects the historical context of our position and of our right as individuals or as a group to "self-identify" as being Traveller."

Mr Joyce added that, whilst recognition of Traveller ethnicity will not directly address the widespread, entrenched and often structural inequalities and discrimination experienced by Traveller women, men and children in Irish society, it would constitute an important gesture of acknowledgement, which cannot be underestimated and should not be sidestepped. "The recognition of Traveller ethnicity is central to any equality of status or standing for the Traveller community."

The point was reiterated by Thomas McCann of Minceirs Whiden about the damage that internalised oppression and shame has done to the Traveller community:



"Many Travellers, as a result of being told by their teachers and by the media, feel from the day they are born that they are failed settled people. That is the message the State has given to all Travellers. The State is saying that actually, the culture is not a valid culture, that really a Traveller is a failed settled person ... We cannot have full equality for Travellers until Travellers are recognised as an ethnic group."

Dr Robbie McVeigh echoed the view that whilst recognition will in no way be a panacea – and Travellers in Ireland remain profoundly unequal across nearly every social index, it can have a real and positive effect: "Recognising Traveller ethnicity places Traveller equality in the correct paradigm – it allows us to draw on the collective wisdom of anti-racist interventions, of good practice and international law – including CERD and ICERD. Recognising ethnicity does not guarantee equality but it does mean that any interventions in support of equality start from the right place."

On behalf of the National Traveller Women's Forum, Ms Maria Joyce spoke of the importance to Travellers as a community of state recognition of their ethnicity, and of how it would represent a step towards real equality for Travellers in Irish society:

"In the 30 years since the founding of Traveller organisations we have called for acknowledgment of our unique identity and place in Irish society – we want Travellers to be valued for the people we are and the contribution we make to Irish society and to be elevated by the State and in the mind-set of all its people. This could bring about a significant positive step on the journey of re righting the ill effects of marginalisation and exclusion and create an opportunity to shape a better future for Travellers."

In its submission, Pavee Point focused on a number of policy areas where, in its view, the non-recognition of Traveller ethnicity has profound implications.

Firstly, Pavee Point disputes the assertion that recognising Travellers as a distinct ethnic group would have no beneficial implications for Traveller status in Irish society, and the argument put forward by the Government to the International Committee for the Elimination of Racial Discrimination that '*To define Travellers as an ethnic group would not entitle Travellers to any additional rights and protections*': "The Government is only correct insofar as Travellers are named as a distinct group for protection under Ireland's equality legislation and are thus offered the protection against discrimination afforded by the legislation. However the Government's assertion of 'no effect' both misconstrues our position and misses the point about the importance of respect for cultural identity."

Pavee Point contends that the Government's persistence in not recognising Travellers as an ethnic group reveals or reflects a mindset and policy project that continues to be assimilationist: "This begs the question that if they are not a distinct community, then *ipso facto* they would be treated the same as the general population and incorporated into the general Irish population and they and their needs will become invisible ... which is patently not the case!"

It further contends that the persistence of this mindset has been a major contributory factor in ensuring that many of the key recommendations of



Government's own policy, including, for example, the Task Force on Travellers; the National Traveller Education Strategy; the National Traveller Health Strategy; the findings of the All Ireland Traveller Health Study etc. have not been implemented. This is most evident, according to Pavee Point, in local authorities' assimilationist approaches to Traveller accommodation - in their, albeit unstated policies, to persuade/force Travellers to move into houses rather than implementing stated Government policy of commitment to the development of Traveller specific accommodation, such as halting sites or group housing.

This assimilationist mindset has more recently been presented as 'mainstreaming' Travellers and used to justify disproportionate cuts in public investment in Travellers under the guise of Austerity measures: "When one reflects on the demographic profile of Travellers it is clear that neither the so-called 'mainstreaming approach' nor denial of their ethnicity is serving Travellers well".

Secondly, Pavee Point submits, the lack of recognition of Travellers as an ethnic group demonstrates a continuing reluctance by Government to acknowledge that Travellers experience racism: The Government position is that it acknowledges that Travellers suffer discrimination but that they are protected as a specific group in Ireland's Equality (anti-discrimination) legislation and that this should be sufficient. In short, the implicit Government position is that Travellers suffer a discrimination that is unique to Travellers and which is unspecified - but which is not racism. "Accordingly, Travellers were excluded from important government and other initiatives to tackle racism over the years, including proposed legislation on hate speech." Since the government axed the effective National Consultative Committee on Racism and Interculturalism (NCCRI), responsibility for anti-racism and interculturalism is the responsibility of the Integration Unit in Dept. of Justice and Equality. This unit specifically only deals with migrant integration and excludes Travellers. How then can Travellers be included in anti-racism and intercultural initiatives as a right?

Finally, Pavee Point argues that the continued lack of recognition of Travellers as an ethnic group, and the lack of explicit acknowledgment that they experience racism, has much deeper consequences than an abstract sociological debate and are major contributing factors to the slow pace of change and the confused and sometimes contradictory policy approaches of Government interventions relating to Travellers in recent years: "We are also mindful that recognition of ethnicity, in and of itself, will not be a panacea for Traveller inclusion in Irish society however it is an essential part of the jigsaw for creating the conditions where Travellers can feel respected and their cultural identity is celebrated; and the State can no longer discount the lived experiences of anti-Traveller discrimination and racism."

## Consequences of Failure to Recognise Traveller Ethnicity

Several contributors to the Committee's deliberations argued that whilst recognition of their ethnicity would have positive benefits for the Traveller community, the failure to so recognise would, conversely, have negative consequences.

One aspect highlighted was the legal dimension, and Ireland's obligations pursuant to international agreements. Emily Logan noted that protections under the *UN International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) – to which Ireland has been bound since ratification in 2000 – are largely linked to ethnicity. She argued that, importantly, continued inaction by the State on Traveller ethnicity diminishes the State's credibility with the UN Committee on the Elimination of All Forms of Racial Discrimination, including the State's interpretation of the recommendations flowing from Ireland's interactive dialogue with the UN on these matters. In addition, Ireland will be examined with regard to its ICERD obligations in 2018. The Commission believes that the matter of Traveller ethnicity requires resolution well in advance of this important examination of our record on racial discrimination before the United Nations.

It was also noted in the course of the hearings that the director of equality in the European Commission's Directorate-General for Justice, Consumers and Gender Equality, Salla Saastamoinen, had commenced an investigation into possible breaches of EU rules on racial equality, which could result in legal action against the State. She stated, referring to the deaths of 10 people at a temporary halting site in Carrickmines, Dublin, in 2015 and the eviction of 23 families from an unofficial site in Dundalk, Co Louth, in January 2016, that "The Travellers appear to face discrimination in Ireland in a number of fields, including housing, employment and access to goods and services." Ms Saastamoinen continued that, even though the State does not recognise Travellers as an ethnic minority, Travellers do come within the scope of the equality directive:

"Whether someone falls under the protection of the directive on grounds of his/her ethnicity cannot be solely dependent on a decision by the member state but must be based on objective criteria. There had been repeated calls from such bodies as the United Nations and the Council of Europe, on Ireland to recognise Traveller ethnicity, as Travellers satisfy "internationally recognised criteria".<sup>1</sup>

Maria Joyce argued that in the absence of recognition of their ethnicity, Travellers are left more vulnerable to indirect discrimination in State policy and practice and cannot rely on automatic comprehensive domestic protection. As evidence of this, she cited the fact that recently, the Criminal Justice (Aggravation by Prejudice) Bill was supported and moved to Committee stage without reference to Travellers. Lack of recognition means Travellers do not benefit from automatic inclusion in such proposed Bills. It also sends out a message by the state that the institutional and societal racism, discrimination,

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<sup>1</sup> <http://www.irishtimes.com/news/social-affairs/european-commission-launches-inquiry-into-treatment-of-travellers-1.2830395>

stereotyping and prejudice that Travellers experience in every aspect of their daily lives is acceptable: "Traveller Women living 11 years less than settled women is not acceptable; Suicide rates 6 times higher in the Traveller community than the national average is not acceptable."

Putting the issue in a broader international context, Dr Robbie McVeigh contended that the failure to recognise Traveller ethnicity had a deeper and wider consequence:

"Firstly, the record of the Irish State creates a dangerous precedent that may well be seized upon by rights-abusing regimes. The record of the Irish State on the issue has already brought censure from CERD and the issue reflects very poorly on Ireland's international reputation. We did not address this issue at the last Committee so I think it is important to recognise that ethnicity denial carries with it a concomitant implication of racism denial. In other words, once a state begins denying that a group has ethnic status it follows that it cannot experience racism since racism is predicated on ethnic difference. This is not an abstruse hypothetical point; it is precisely what the Nazis did to Roma or 'Gypsies'. Under Nazism, the German State denied Roma ethnicity and classified all Roma as 'asocial' and criminals as a prelude to genocide. Moreover, this process continued in the post-war period and it was not until 1970s that the German Government began to recognise that the Nazi persecution of the 'Gypsies' had been racially motivated rather than an issue of 'policing' an 'asocial' group. We do not need any further evidence that ethnicity denial and racism denial are very dangerous tactics of states. In other words, ethnicity denial should only occur after the most careful of examinations and certainly not on the whim of a given minister or civil servant. This continued denial of Traveller ethnicity has dangerous implications and Irish politicians and the Irish Government and the Irish state should understand the enormity of these implications around the world."

### **Costs and/or legal implications of recognition**

Some witnesses took issue with the assumption that there is some substantial cost implication associated with the recognition of Traveller ethnicity, or that it could open the floodgates to rights-based litigation.

According to Dr McVeigh, this cost implication is not real, and the recognition of Traveller ethnicity by the Irish State will offer nothing more than a minimal protection from the worst excesses of anti-Traveller discrimination. He cited as evidence the examples of Northern Ireland, England and Wales, or Scotland, where the recognition of Traveller ethnicity has had no profound consequences for the public purse: "In each of those jurisdictions, the recognition of Traveller ethnicity was an important marker of changing analysis and an important step toward Traveller equality but no unbearable cost or burden fell on any of the jurisdictions after they recognised Traveller identity. Moreover, in terms of a Traveller justice and equality perspective, we might rather suggest that the consequences of recognition have been disappointing – the cost implications have been minimal and the improvement to Travellers situation marginal."

Mr David Joyce BL, for the Irish Human Rights and Equality Commission, challenged the argument that recognition of Traveller ethnicity would result in more litigation, or a flood of claims before the courts. He pointed out that Travellers already enjoy significant rights under the Constitution and under international conventions, and this has not resulted in a flood of litigation. Recognition would not necessarily enhance the legal rights of Travellers. Many of the current legal actions relate to accommodation and provision, and arise out of causes of action which already exist in domestic legislation and where there is a failure by local authorities to fulfil their statutory obligations: "I cannot see how the recognition of Traveller ethnicity confers extra political and legal rights specifically on Travellers. It may have an impact on a broader notion of equality in the State. There is nothing in recognising Traveller ethnicity, however, that will put them above and beyond any other citizen in terms of a cause of action."

## Recommendations

Based upon the hearings and broader consideration of the issues, the Committee makes the following recommendations to the Tánaiste and Minister for Justice and Equality:

- The Committee is of the view that Travellers are, de facto, a separate ethnic group. This is not a gift to be bestowed upon them, but a fact the State ought to formally acknowledge, preferably by way of a statement by the Taoiseach to Dáil Éireann.
- The Committee strongly encourages that this step be taken and at the earliest date possible in 2017.
- The Government should then conduct a review, in consultation with Traveller representative groups, of any legislative or policy changes required on foot of the recognition of Traveller ethnicity.

## Appendix 1 – Committee Membership

### Joint Committee on Justice and Equality

#### Deputies



Caoimhghín Ó Caoláin TD  
(SF) [Chair]



Colm Brophy TD  
(FG)



Jack Chambers TD  
(FF)



Clare Daly TD  
(I4C)



Alan Farrell TD  
(FG)



Jim O'Callaghan TD  
(FF)



Mick Wallace TD  
(I4C)

## Senators



Frances Black  
(CEG)



Lorraine Clifford-Lee  
(FF)



Martin Conway  
(FG)



Niall Ó Donnghaile  
(SF)

### Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil on 16th June 2016.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 20<sup>th</sup> July 2016.

## Appendix 2 – Terms of Reference of the Committee

### JOINT COMMITTEE ON JUSTICE AND EQUALITY

#### TERMS OF REFERENCE

##### **a. Functions of the Committee – derived from Standing Orders [DSO 84A; SSO 70A]**

- (1) The Select Committee shall consider and report to the Dáil on—
  - (a) such aspects of the expenditure, administration and policy of a 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 appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, 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 appointed pursuant to this Standing Order 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 187,
  - (c) Estimates for Public Services, and
  - (d) other mattersas shall be referred to the Select Committee by the Dáil, and
  - (e) Annual Output Statements including performance, efficiency and effectiveness in the use of public monies, 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:

- (a) matters of policy and governance 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 and governance in respect of bodies under the aegis of the Department,
  - (e) policy and governance 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,
  - (g) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,
  - (h) 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,
  - (i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
  - (j) 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 subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and
  - (k) such other matters as may be referred to it by the Dáil from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, 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) Where a Select Committee appointed pursuant to this Standing Order has been joined with a Select Committee appointed by Seanad Éireann, the Chairman of the Dáil Select Committee shall also be the Chairman of the Joint Committee.
- (7) The following may attend meetings of the Select or Joint Committee appointed pursuant to this Standing Order, 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.

**b. Scope and Context of Activities of Committees (as derived from Standing Orders)  
[DSO 84; 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; and
- (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) 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 Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993; and
- (4) any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Orders [DSO 111A and SSO 104A].
- (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.

- (6) 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 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

## Appendix 3 – Witnesses and Official Report

**26 October 2016**

### **National Traveller Women's Forum**

Ms. Maria Joyce, Coordinator

### **The Irish Traveller Movement**

Mr. Bernard Joyce, Director

Ms. Jacinta Brack, Public Relations and Political Coordinator

### **Irish Human Rights & Equality Commission**

Ms. Emily Logan, Chief Commissioner

Mr. David Joyce BL, Commission Member

[Official report](#)

**9 November 2016**

### **Pavee Point Traveller & Roma Centre**

Mr. Martin Collins, Co-Director

Ms. Ronnie Fay, Co-Director

### **Minceirs Whiden**

Mr. Thomas McCann, Member

### **Other Witnesses**

Ms. Anastasia Crickley, Chairperson, UN Committee for the Elimination of Racial Discrimination

Dr. Robbie McVeigh, Academic

[Official report](#)

## Appendix 4 – Opening Statements

### Irish Human Rights and Equality Commission (Ms Emily Logan, Chief Commissioner)

The Irish Human Rights and Equality Commission appreciates the opportunity to present to the Committee today. As Ireland's national human rights institution and national equality body, the Commission has a statutory remit to protect and promote human rights and equality in Ireland, and to promote a culture of respect for human rights, equality and intercultural understanding.

A core part of the Irish Human Rights and Equality Commission's three-year *Strategy Statement (2016–2018)* is the promotion of pluralism and the acceptance of differences. We are committed to encouraging a culture of respect for freedom and dignity, and the understanding of human rights and equality in the State. The Commission, along with its predecessor bodies – the Irish Human Rights Commission and the Equality Authority – has consistently raised concerns with regard to the human rights and the equality protections afforded to the Traveller community in Ireland. We will continue to raise these matters at every opportunity, before domestic and international fora. The recognition of Travellers as a distinct ethnic group is not in doubt. Yet, for the purpose of international agreements and before the United Nations and other international bodies, overt recognition continues to be withheld by successive Irish Governments. This is a serious and ongoing concern and the Commission strongly believes that the time has come for the Irish state to finally move on the recognition of Travellers as an ethnic minority.

#### ***De facto* recognition from the international community and at home**

The State is bound by the international consensus that self-determination forms the basis of a person identifying as belonging to a particular ethnic or racial group. International bodies have historically and continue to recognise the Traveller community as an ethnic minority and have consistently recommended that the Irish State should do likewise.<sup>2</sup> We already see *de facto* recognition of Traveller ethnicity in our equality legislation. The definition of 'Travellers' adopted by the Oireachtas for the purpose of the Equal Status Acts (2000-2015) states:

“Traveller community” means the community of people who are commonly called Travellers and who are identified (both by themselves and others) as

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<sup>2</sup> UN Committee on the Elimination of all forms of Racial Discrimination (2011) Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland, CERD/C/IRL/CO/3-4, at para 12; UN Office of the High Commissioner for Human Rights (OHCHR) (2011) Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona: Mission to Ireland; UN Human Rights Committee (2014) Concluding Observations on the Fourth Periodic Report of Ireland, CCPR/C/IRL/CO/4, at para 23; UN Committee on Economic, Social and Cultural Rights (2015) Concluding Observations on the Third Periodic Report of Ireland, E/C.12/IRL/CO/3, at para 33; UN Committee on the Rights of the Child (2016) Concluding Observations on the Combined Third and Fourth Periodic Report of Ireland, CRC/C/IRL/CO/3-4, at para 70(a) and UN Human Rights Council (2016) Report of the Working Group on the Universal Periodic Review: Ireland, A/HRC/33/17.

people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland.”<sup>3</sup>

We also see implicit recognition in other contexts, such as the inclusion of Travellers as a specific group for the purposes of the Council of Europe *Framework Convention for Protection of National Minorities*, and the State’s reports to the United Nations at the time of its examinations under the *International Covenant on Civil and Political Rights (ICCPR)*, the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* and under the *International Covenant for the Elimination of all forms of Racial Discrimination (CERD)*. Against this backdrop, the logic of the Irish State’s ongoing refusal to recognise Traveller ethnicity must be questioned. As recommended by the predecessor to this Committee in its 2014 Report on the Recognition of Traveller Ethnicity: ‘it is no longer tenable for this State to deny Traveller ethnicity’.

### **The consequences of non-recognition**

Protections under the *UN International Convention on the Elimination of All Forms of Racial Discrimination (CERD)* – to which Ireland has been bound since ratification in 2000 – are largely linked to ethnicity. Importantly, continued inaction by the State on Traveller ethnicity diminishes the State’s credibility with the UN Committee on the Elimination of All Forms of Racial Discrimination, including the State’s interpretation of the recommendations flowing from Ireland’s interactive dialogue with the UN on these matters. Ireland will be examined with regard to its CERD obligations in 2018. The Commission believes that the matter of Traveller ethnicity requires resolution well in advance of this important examination of our record on racial discrimination before the United Nations.

### **What is involved?**

There is no legal impediment to recognition of Traveller ethnicity. This important legal change to recognise our indigenous Traveller community does not require a referendum, it does not even require primary legislation. The government committed in front of the United Nations Human Rights Council in 2011 to recognise Traveller ethnicity. What is required is simply a Ministerial Order – the signing by a Minister of Traveller ethnicity into law. It therefore begs the question why this has not happened.

### **The benefits of recognition**

The negative impact of non-recognition on the engagement between the Traveller community and State is unnecessary. With the unequivocal recognition of a distinct culture and identity, we can better anticipate and respond to the needs of the Traveller community. We heard in late 2015, in the political debates following the Carrickmines tragedy, how local authorities had not even drawn down monies allocated for Traveller accommodation. It is perhaps more useful now to think about how recognition will be the catalyst for a rethink of how we spend the public money on policies affecting Travellers, how priorities should be reconsidered in a new light.

We can build on a strong foundation of equality of standing in the context of the relationship between the Traveller and settled communities. From that starting point, the issues which are important to our society can begin to be discussed in

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<sup>3</sup> Equal Status Acts 2000-2015, s.2(1); Employment Equality Acts 1998-2015, s.2(1).

a more meaningful and mutually respectful context. With that, we can continue the work of understanding what needs to change in law and policy to support members of the Travelling community, for example, in accessing education, in accessing culturally-appropriate and safe accommodation and in accessing healthcare, amongst other priority areas. Respect for Travellers' cultural identity must be reflected in Government policy decisions. But how can this happen in the absence of recognition Traveller ethnicity? It is the Commission's position that it cannot. There continues to be a strong political argument in favour of recognition, as the first, albeit very significant and symbolic step, in a longer conversation. The recognition of Traveller ethnicity in Ireland must be placed within the broader international context of discussion of 'others', 'outsiders' and 'division'. This is an opportunity for us to show our national political leadership, and set ourselves as a standard bearer, against those who would seek to hold back progress towards equality and human rights provision. We must show through our political actions, our Irish fortitude against international voices of intolerance and mark our determination to act positively.

The achievement of equality and respect for human rights must involve access to recognition, status and standing in society and to relationships of respect. The recognition of Traveller ethnicity is central to any equality of status or standing for the Traveller community.

## National Traveller Women's Forum (Maria Joyce, Coordinator)

Good afternoon chairman, deputies and Senators. I am delighted to be here today from the National Traveller Women's Forum and welcome the Committee's interest in raising the matter of Traveller ethnic recognition as a priority for your work. I am joined by, Barney Joyce and Jacinta Brack of the Irish Traveller Movement.

Travellers have a shared history, Culture and Language with its own customs and traditions which are recognisable and distinct.

There are two essential elements identified in the Act of 1976 which constitute an ethnic group

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

Travellers share both of these characteristics we self Identify as an ethnic group and we are seen as a separate group by others.

Our recognition as an ethnic minority in Ireland has been long outstanding. Despite many years of campaigning the first formal reference by the State to our requests was noted in October 2011 when Minister Alan Shatter said the State would give clear consideration to the matter, 5 years on we are still waiting.

In April 2014 the former Joint Oireachtas Committee on Justice issued their report and recommendations on *Recognition of Traveller Ethnicity* as follows: that either the Taoiseach or Minister for Justice and Equality would make a statement to Dáil Éireann confirming State recognition, that the Government would then inform relevant international bodies of that decision and that a time-limited dialogue would be undertaken with Traveller representative groups about possible new, or amendments to existing legislation, now required. 2 and a half years on and still nothing. To say we are bitterly disappointed at this continued denial of Traveller ethnicity is putting it mildly.

In July 2015 the position of the State was publicly confirmed for the first time which was, according to the Attorney General's office, *there is no impediment to state recognition under 2 principle concerns, Cost and additional legal implications*.

In the meantime, calls from domestic and international human rights bodies, treaties and covenants to which Ireland is a party to have appealed to the Irish government to afford Travellers the right to have our unique identity recognised, These calls have been left unanswered.

Only last week the director of equality in the European commission's directorate-general for justice cited they may issue proceedings against [Ireland](#) for alleged discrimination against Travellers. She referred to repeated calls from such bodies as the [United Nations](#) and the Council of Europe for Ireland to recognise Traveller ethnicity, as Travellers satisfy "internationally recognised criteria.



In our current position we are more vulnerable to indirect discrimination in State policy and practice and cannot rely on automatic comprehensive domestic protection, this was evidenced three weeks ago when the Criminal Justice (Aggravation by Prejudice) Bill was supported and moved to Committee stage without reference to Travellers. Lack of recognition means we do not benefit from automatic inclusion in such proposed Bills. It also sends out a message by the state, that the institutional and societal racism, discrimination, stereotyping and prejudice that Travellers experience in every aspect of their daily life's is acceptable. Traveller Women living 11 years less than settled women is not acceptable, Suicide rates 6 times higher in the Traveller community than the national average is not acceptable.

So we ask then, what is the delay. After all - As Travellers we satisfy the standard legal and sociological criteria for recognition - that is undisputed internationally.

Domestic and international human rights bodies have consistently reminded the Irish State of their obligations to Irish Travellers to have our ethnicity recognised as set out in international human rights treaties ratified by the Irish Government.

The British and Northern Irish authorities, Scotland and Wales have recognised Travellers as an ethnic group, separate from non-Traveller Irish people

The Irish State as directed by the Attorney General's office has also conceded there is no impediment to our recognition.

Barney will discuss the importance to us as a community of state recognition,. But fundamentally recognition of our ethnicity is a step towards real equality for Travellers in Irish society. In the 30 years since the founding of Traveller organisations we have called for acknowledgment of our unique identity and place in Irish society- we want Travellers to be valued for the people we are and the contribution we make to Irish society and to be elevated by the State and in the mind-set of all its people. This could bring about a significant positive step on the journey of re righting the ill effects of marginalisation and exclusion and create an opportunity to shape a better future for Travellers.

## Irish Traveller Movement (Bernard Joyce, Director)

Good afternoon chairman, deputies and Senators. I too am delighted to speak today on the matter of Traveller ethnicity recognition, and thank you and the Committee for your interest.

Maria has outlined earlier how the issue of our ethnicity is undisputed. We all belong to an ethnic group.

I was born a Traveller; it is my identity – I cannot become un – Traveller. I belong to a group who share a history that is our own – a culture, values, beliefs and language individual to us. We also uniquely share a historical experience of discrimination and marginalisation on this island which has created huge gaps in our social, health and life outcomes, as indicated previously.

Ethnicity is not the same as race, nationality or place of birth, and by recognising Traveller ethnicity won't make us less Irish, it will however acknowledge our dual identity of being – both Irish and Traveller, similar to Irish Americans, African Americans, etc.

Having my identity recognised, defined and included, would enhance my pride of place in Irish society my sense of being part of – rather than separate to.

What we seek from the Irish state is an acknowledgment that our view of ourselves as a community is valid, and should be recognised as such.

Fundamentally, it is about respect and inclusion.

One particular advantage to ethnicity recognition is the opportunity to enhance community esteem and address internalised oppression. Internalised oppression which supports the notion that the majority community is right, superior and the standard, leads to poor self-image, low self-esteem, a lack of pride in one's cultural identity, stress, depression and in some cases alcohol and drug abuse. It can cause low expectations both of ourselves and of our community. This sadly is not unique to us, other minority groups across the globe share its impact on the wellbeing of their communities. However, despite the difficulties faced by our community, the crisis to our mental and social well-being and the vulnerabilities threatening our young people, as a community we still attach pride to being Traveller.

Recognising our minority ethnic status means that we also would be automatically included in anti-racism and integration policies and initiatives.

Our desire is to be valued for the people we are and to be elevated by the State bringing about a positive step on the journey of re righting the ill effects of our marginalisation. It also creates the opportunity for further collaboration and an improved trust between the state and Travellers.

That recognition however is not a gift to be bestowed by the State or by others, our ethnicity without question is our unique identity.

Our desire for acknowledgement reflects the historical context of our position and of our right as individuals or as a group to “self-identify” as being Traveller.

Recognition of our ethnicity has both symbolic and practical benefits.  
Thank you.

## **Anastasia Crickley (UN Committee for the Elimination of Racial Discrimination, Chairperson)**

### **Acknowledgement of Traveller Ethnicity**

As Chairperson of the UN Committee for the Elimination of Racial Discrimination (CERD), as someone who for more than thirty years has engaged in solidarity work with Travellers and Roma organisations in Ireland, Europe and beyond, and as an academic at Maynooth University who was proud to have taught more than twenty Traveller graduates I thank you for the opportunity to engage with you today. Thank you too for your ongoing interest in this urgent and important matter, for Travellers and for Irish society as a whole.

The International Convention on the Elimination of all forms of Racial Discrimination (ICERD), which in 2015 marked 50 years since adoption, is the first UN Human Rights Treaty after the Universal Declaration of Human Rights. The 177 countries globally which have ratified the ICERD agree to report on progress and receive feedback and recommendations every four years from the independent Committee which I have the honour to chair. Ireland ratified the Convention in 2000 and has reported twice to the CERD - in 2005 and 2011. I understand that our third report, now well due, is currently being prepared and will be submitted next year with examination by the Committee probably early in 2018.

CERD actively supports the widely international consensus regarding the rights of people to identify as members of particular ethnic groups and has called on states to acknowledge this self identification. Our General Recommendation 27 furthermore recognises and seeks remedies for the particular discrimination faced by Roma and Travellers, a discrimination which can and often does include identity denial and identity despicable.

The Concluding Observations of CERD on Ireland, alongside those of a number of other UN Treaty Bodies and the Reports of the Working Groups on Ireland's two Universal Periodic Reviews (of the state of human rights in Ireland) have consistently recognized and consistently recommended that the Irish state should do likewise. In 2011 we called on Ireland, recalling our General Recommendation 8 to pay particular attention to self identification as a critical factor in the identification and conceptualisation of Travellers as an ethnic minority group. We recommended that the state should continue to engage with the Traveller community and work concretely towards recognizing Travellers as an ethnic group.

In fact as has already been pointed out including here by Emily Logan of the Irish Human Rights and Equality Commission there already is de facto recognition of Traveller ethnicity in Irish Equality legislation with the definition of Travellers adopted by the Oireachtas for the Equal Status Act largely conforming to understood international definitions of ethnicity, including those used in British legislation. In addition such recognition is also implied by the focus on discrimination and racism against Travellers in the States's reports to Council of Europe human rights bodies as well as to the UN bodies listed above .

There are no legal barriers to recognizing Traveller ethnicity. Acknowledgement will not directly address the widespread, entrenched and often structural inequalities and discrimination experienced by Traveller women men and children in Irish society but it constitutes an important gesture of acknowledgement, which cannot be underestimated and should not be sidestepped.

I am very grateful to Mr. Caoimhghín Ó Caoláin TD, Chairman of the Joint Committee on Justice and Equality, for the invitation to this meeting of the Committee. I understand that the Committee has identified the recognition of Traveller ethnicity as one of its priorities in its work programme. I think it is very important that this issue *is* prioritized and I welcome the opportunity to discuss this issue with members. It is an issue that I have engaged with in a range of different ways since I was first asked to address the issue of Traveller ethnicity in the context of Northern Ireland by the Standing Advisory Commission on Human Rights in 1990.

I do not want to rehearse the arguments that have been made around Traveller ethnicity in any substantive detail. These are well made and have long been in the public domain. We also examined them in some detail at the session I addressed of the Joint Committee on Justice, Defence and Equality in June 2013. It is, however, probably useful to summarise in the context of our discussion today. In Northern Ireland the issue was left beyond doubt by the specific naming of Travellers in the *Race Relations (Northern Ireland) Order 1997* (RRO). In England and Wales, the issue was examined in the test case of *O'Leary & Others v Punch Retail & Others* (Westminster County Court 29 August 2000). I was the expert witness for the Commission for Racial Equality in this case and the court found in favour of Traveller ethnicity. The key point is that the issue was examined in forensic detail. I can provide a copy of the judgment to the Committee or look at elements of the judgment in more detail if people wish to revisit these arguments.

At the last discussion, I did not speak to the situation in Scotland which is slightly different so it may be helpful to the Committee to add something on this. The situation in Scotland is predicated by a commitment by the Scottish Government to recognised ethnicity:

*The Scottish Government recognises Gypsy/Travellers as an ethnic group in its work and encourages others to do likewise. The Equality Act 2010 provides the legislative framework which protects people (such as Gypsy/Travellers) who are recognised as a distinct ethnic group from being discriminated against on the grounds of ethnicity. This follows an Employment Tribunal ruling in 2008 in the case of K MacLennan vs Gypsy Traveller Education and Information Project, which concluded that Scottish Gypsy/Travellers are a group which can be defined by reference to their ethnic origins and can therefore be afforded legal protection under the Race Relations Act (1976)*

This approach to Traveller ethnicity is integrated into broader equality strategy of the Scottish Government (see <https://beta.gov.scot/policies/equality/gypsy-travellers/>).

In summary: in different ways – formal legal definition in Northern Ireland, formal legal judgement in England and Wales and a combination of legal judgement and Government policy in Scotland – Traveller ethnicity is recognised across the different jurisdictions of the UK. I find it difficult to imagine any context in which Travellers might be 'de-ethnicized' in any of these jurisdictions. Ironically, therefore, in terms of contemporary discussions around Brexit, there is already a hard border for Travellers in Ireland in which their status changes arbitrarily between Dundalk and Newry and Muff and Derry. In this context, the

ridiculousness of Travellers having an ethnic status embedded by law in the six counties which they lose as soon as they cross the border to the 26 counties is well-established.

Yet all the elements that make Travellers an ethnic group in the UK across these jurisdictions – including the ‘essential characteristics’ of an ethnic group: ‘a long shared history’ and a ‘cultural tradition of its own’ – hold in the 26 counties. In short, all the evidence suggests that there is no good reason for Traveller ethnicity not be recognised in the 26 counties. I make this point advisedly – in all the time I have been working on this issue, there hasn’t been a substantive case made against Traveller ethnicity – the strongest case to date was that of the expert witness for the defence in the O’Leary case who suggested that the issue was ‘not proven’. This reality suggests that the continued prevarication is a political act based on assertion rather than an examination of the evidence. It is not a position which stands up to legal or sociological scrutiny. Indeed, it is intellectually frustrating that the case against Traveller ethnicity is so rarely and so poorly made.

This said, I think it will remain possible for the Irish State to continue to examine this issue in perpetuity as an excuse for not recognising Traveller ethnicity *if it wants to do so*. Moreover, I also think it is possible that the State will always be able to find someone – Traveller or non-Traveller – to suggest that Travellers are not an ethnic group. It bears emphasis, however, that this is not a sufficient condition for ethnicity denial. There is no question that the same thing could be done with any established ethnicity in the British context – including Irishness. In other words, it would be possible to find some academic or researcher or member of the Irish community who is prepared to say that they do not believe that Irish people are an ethnic group. It bears emphasis, however, that this would not undermine the existing protections offered to Irish people by the Race Relations Act.

From this perspective, the ongoing prevarication on Traveller ethnicity looks particularly ill-judged. As I have said, it is never made on substantive argument. If we are forced to attribute some motive for the ongoing denial based on the discussions to date, it seems there are only two likely explanations. First the opposition of a given minister or civil servant to the principle of Traveller ethnicity is sufficient explanation: on this basis, the state will continue the denial whatever the evidence to the contrary. There is not much that I can say on this except to observe that I think most Irish citizens would want a more grounded and evidence-based approach to policy formation and equality. Second, while it is accepted that all the evidence points in favour of Traveller ethnicity, it is assumed that there is some cost implication of this is so great that ethnicity will continue to be denied in order to avoid that cost.

On this issue, I should say that I start my own analysis from the position that Travellers should be recognised as an ethnic group because legally and sociologically they *are* an ethnic group – this is true whatever the consequences. Here I hold with the notion *fiat justitia ruat cælum* – let justice be done though the heavens fall. In other words, even if there were some enormous economic or social cost, it would still be the correct moral and legal thing to do. I also have to say, however, that I do not think that this cost implication is real. The recognition of Traveller ethnic by the Irish State will offer a minimal protection from the worst excesses of anti-Traveller discrimination – and that is it.

Here it bears emphasis that recognising Traveller ethnicity has had none of these profound consequences in the north of Ireland or England and Wales or Scotland. In each of those jurisdictions, the recognition of Traveller ethnicity was an important marker of changing analysis and important step toward Traveller equality but no unbearable cost or burden fell on any of the jurisdictions after they recognised Traveller identity. Moreover, in terms of a Traveller justice and equality perspective, we might rather suggest that the consequences of recognition have been disappointing – the cost implications have been minimal and the improvement to Travellers situation marginal. I should, however, emphasise that I do not think the latter point should be allowed to become a tool against ethnicity. Recognising Traveller ethnicity places Traveller equality in the correct paradigm – it allows us to draw on the collective wisdom of anti-racist interventions, of good practice and international law – including CERD and ICERD. Recognising ethnicity does not guarantee equality but it does mean that any interventions in support of equality start from the right place.

And here I think we need to put this issue in the wider consequence. Firstly, the record of the Irish State creates a dangerous precedent the may well be seized upon by rights-abusing regimes. The record of the Irish State on the issue has already brought censure from CERD and the issue reflects very poorly on Ireland's international reputation. We did not address this issue at the last Committee so I think it is important to recognise that ethnicity denial carries with it a concomitant implication of racism denial. In other words, once a state begins denying that a group has ethnic status it follows that it cannot experience racism since racism is predicated on ethnic difference. This is not an abstruse hypothetical point; it is precisely what the Nazis did to Roma or 'Gypsies'. Under Nazism, the German State denied Roma ethnicity and classified all Roma as 'asocial' and criminals as a prelude to genocide. Moreover, this process continued in the post-war period and it was not until 1970s that the German Government began to recognise that the Nazi persecution of the 'Gypsies' had been racially motivated rather than an issue of 'policing' an 'asocial' group. We do not need any further evidence that ethnicity denial and racism denial are very dangerous tactics of states. In other words, ethnicity denial should only occur after the most careful of examinations and certainly not on the whim of a given minister or civil servant. This continued denial of Traveller ethnicity has dangerous implications and Irish politicians and the Irish Government and the Irish state should understand the enormity of these implications around the world.

Finally, in this year of commemoration, I think it is important to say that recognising Traveller ethnicity should be a key part of the process of cherishing the children of the nation equally. In the 100 years since the Proclamation, it has become clear that to 'cherish people equally' is necessary to recognise their difference. This is hardly a contentious point in terms of contemporary equality law and practice – ethnicity, alongside gender and sexuality and a host of other differences, needs to be acknowledged as part of the process of delivering equality. Travellers in Ireland remain profoundly unequal across nearly every social index – mortality, morbidity, educational attainment, housing conditions and so on. If we are serious about addressing this inequality, we need to recognise Traveller ethnicity. It bears emphasis that this will not be a panacea – nor indeed will the heavens fall in. Nevertheless, recognising Traveller ethnicity could be a keystone in the process of finally and genuinely beginning to cherish Travellers equally in Ireland.



## Pavee Point Traveller and Roma Centre (Mr. Martin Collins, Co-Director)

Chairman and Members of the Committee,

Pavee Point welcomes the opportunity to make this presentation to the Joint Oireachtas Committee on Justice & Equality this morning. Before setting out three key points about ethnic recognition, racism and the disjuncture between the spirit of equality legislation and government policy, we feel compelled to express our deep frustration and disappointment that once again we are appearing before an Oireachtas Committee to make a case for formal recognition of Traveller ethnicity by the Irish State, as we have on many previous occasions.

At this stage we believe that the State should explain its rationale for refusing to grant such recognition despite recommendations by UN treaty monitoring bodies;<sup>i</sup> European institutions;<sup>ii</sup> Irish equality and human rights bodies;<sup>iii</sup> and the Joint Oireachtas Committee on Justice, Defence and Equality<sup>iv</sup>. In November 2014, Minister of State for Equality, New Communities and Culture made a commitment that the recognition of Traveller ethnicity would become a 'reality' but this has yet not happened.<sup>v</sup> Why is this so? It is ironic that Irish Travellers are recognised as an ethnic group in Britain and Northern Ireland, but not here.

We will not restate many of the arguments we have previously made in making the case for recognition of Traveller ethnicity-including for example the lack of any legal or financial impediments to such recognition and the symbolic importance of such recognition to the Traveller community- as we recognise that many members here are already convinced of the rationale and evidence for such recognition. We are also mindful that our sister organisations and the IHREC articulated many of these reasons at your last sitting.

This morning instead, Pavee Point would like to focus on 3 policy areas where the non-recognition of Traveller ethnicity has profound implications.

**Firstly**, Pavee Point disputes the assertions of many different Governments since 2005 that recognising Travellers as a distinct ethnic group would have no beneficial implications for Traveller status in Irish society '*To define Travellers as an ethnic group would not entitle Travellers to any additional rights and protections*' as the Government stated to the International Committee for the Elimination of Racial Discrimination.

The Government is only correct in so far as Travellers are named as a distinct ground for protection under Ireland's equality legislation and are thus offered the protection against discrimination afforded by the legislation. However the Government's assertion of 'no effect' both misconstrues our position and misses the point about the importance of respect for cultural identity. Pavee Point contends that the Government's persistence in not recognising Travellers as an ethnic group reveals or reflects a mindset and policy project that continues to be assimilationist. This begs the question that if they are not a distinct community then *ipso facto* they would be treated the same as the general population and incorporated into the general Irish population and they and their needs will become invisible....which is patently not the case!

Pavee Point contends that the persistence of this mindset has been a major contributory factor in ensuring that many of the key recommendations of Government's own policy including for example the Task Force on Travellers; the National Traveller Education Strategy; the National Traveller Health Strategy; the findings of the All Ireland Traveller Health Study etc. have not been implemented. This is most evident in local authorities' assimilationist approaches to Traveller accommodation - in their, albeit un-stated policies, to persuade/force Travellers to move into houses rather than implementing stated Government policy of commitment to the development of Traveller specific accommodation, such as halting sites or group housing.

This assimilationist mindset has more recently been presented as 'mainstreaming' Travellers and used to justify disproportionate cuts in public investment in Travellers under the guise of Austerity measures. Using Government figures under Austerity the following cuts were made<sup>vi</sup>:

<b>2008 - 2013: Programmes for Travellers</b>	
Interagency activities	-100%
Education	-86.6% (€76.5m in 2008 to €10.2 in 2013)
Accommodation	-85% (€40m in 2008 to €4m in 2013)
Equality	-76.3%
National Traveller Organisations	-63.6%
FAS SIT (employment initiative)	-50%
National Traveller Partnership	-32.1%
SPY youth projects	-29.8%
Health	-5.4%
<b>Overall government cut</b>	<b>-4.3%</b>

Interestingly in June this year the European Commission in their assessment of Ireland under the EU Framework for National Roma Integration Strategies & Communication on Effective Roma Integration Measures 2016 stated:

'A mainstreamed approach is sufficient when outcomes are identical for all components of the target groups; when evidence shows a clear gap between the situation of Roma and Travellers versus the rest of society (e.g. regarding their health and housing situation), policies should be adjusted and specific measures should also be developed.'

When one reflects on the demographic profile of Travellers it is clear that neither the so-called 'mainstreaming approach' nor denial of their ethnicity is serving Travellers well:

- 84% of Travellers are unemployed in comparison to an overall figure of 14%.  
(Census 2011)

- 7.6% of Travellers, or 2,753 Traveller men women and children do not have access to running water. (AITHS 2010) <sup>4</sup>
- Traveller mortality rates are three times the national average; life expectancy for Traveller men is 15 years less and for Traveller women 12 years less than the national population; suicide rates are over six times the national average, and seven times for Traveller men. Suicide accounts for 11% of all Traveller deaths.
- Census 2011 shows that 55% of Travellers leave school before the age of 15; only 13% complete secondary schooling. Less than 1% of Travellers go on to third level education.

**Secondly**, the lack of recognition of Travellers as an ethnic group demonstrates a continuing reluctance by Government to acknowledge that Travellers experience **racism**. The Government position is that they acknowledge that Travellers suffer discrimination but that they are protected as a specific ground in Ireland's Equality (anti-discrimination) legislation and that this should be sufficient. In short, the implicit Government position is that Travellers suffer a discrimination that is unique to Travellers and which is unspecified - but which is not racism. Accordingly, Travellers were excluded from important government and other initiatives to tackle racism over the years, including proposed legislation on hate speech.

This was clearly evidenced when, in 2005, Pavee Point had to lobby the Government, and later embarrass them in Geneva at the first hearing of Ireland under ICERD, to ensure that Travellers were (a) included in initiatives such as the Know Racism public awareness programme, and (b) invited to be part of the steering group to implement the Government's National Action Plan against Racism, the then key policy instrument to tackle racism.

In addition, since the government axed the effective National Consultative Committee on Racism and Interculturalism (NCCRI), responsibility for anti-racism and interculturalism is the responsibility of the Integration Unit in Dept. of Justice and Equality. This unit specifically only deals with migrant integration and excludes Travellers. How then can Travellers be included in anti-racism and intercultural initiatives as a right?

A further example of this was the potential exclusion of Travellers from the Census question on ethnicity. Pavee Point was the first organisation in Ireland in 1994 to lobby for an ethnic question in our Census and, ironically, when it was finally being introduced in the 2006 Census Travellers would have been excluded had we not reached a compromise with the CSO and the ethnic question now posed 'What is your ethnic or cultural background?' is now inclusive of Travellers.

**Thirdly**, the Government position on Traveller ethnicity is also contradictory and confusing to many outside observers. There are numerous examples of stated Government policy recognising Travellers as an ethnic group in all but name, most notably the definition of Travellers contained in the Equal Status Act where Travellers are defined as:

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<sup>4</sup> The All-Ireland Traveller Health Study 2010 (also known as "Our Geels") was commissioned by the Department of Health and undertaken by University College Dublin in partnership with Traveller groups and the Health Service Executive.

“Traveller Community’ means the community of people 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>5</sup>

While the question of what constitutes an ethnic group has not been defined in Irish Law the language used to define Travellers under the Equal Status Act is virtually identical, and is clearly drawn from the definitions, of what constitutes an ethnic group under British Law.

In the landmark case *Mandla vs. Lee*, 1983, the British courts stated that for a group to constitute an ethnic group it must fulfil a number of conditions, including two essential conditions which are ‘a long shared history’ and a ‘cultural tradition of its own’. It is somewhat ironic in this context that Irish Travellers are recognised as an ethnic group in both Britain and Northern Ireland, but not in the Republic of Ireland. Personal accounts from Travellers about their experiences of living in England show that they felt more respected as a result.

Pavee Point contends that the continued lack of recognition of Travellers as an ethnic group and the lack of explicit acknowledgment that they experience racism, have much deeper consequences than an abstract sociological debate and are major contributing factors to the slow pace of change and the confused and sometimes contradictory policy approaches of Government interventions relating to Travellers in recent years. We are also mindful that recognition of ethnicity, in and of itself, will not be a panacea for Traveller inclusion in Irish society however it is an essential part of the jigsaw for creating the conditions where Travellers can feel respected and their cultural identity is celebrated; and the State can no longer discount the lived experiences of anti-Traveller discrimination and racism.

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<sup>i</sup> UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the third periodic report of Ireland*, E/C.12/IRL/CO/3, 19 June 2015; Committee on the Elimination of Racial Discrimination, CERD/C/IRL/CO/2, 2005; Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination*, CERD/C/IRL/CO/3-4, 10 March 2011; Committee on the Elimination of All Forms of Discrimination against Women, *Concluding Comments: Ireland*, CEDAW/C/IRL/CO/4-5, 22 July 2005; Committee on the Rights of the Child,

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<sup>5</sup> Equal Status Act, 2000

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*List of issues in relation to the combined third and fourth periodic reports of Ireland*, CRC/C/IRL/Q/3-4, 2015; Human Rights Committee, *Concluding observations on the fourth periodic report of Ireland*, 2014.

<sup>ii</sup> European Commission against Racism and Intolerance, *Second Report on Ireland Adopted on 22 June 2001*, Strasbourg, Council of Europe, CRI (2002) 3; Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Ireland adopted on 10 October 2012*, ACFC/OP/III(2012)006, Strasbourg, Council of Europe.

<sup>iii</sup> The Human Rights Commission and the Irish Equality Authority are now merged into the Irish Human Rights and Equality Commission. See Irish Human Rights Commission, *Submission to the UN Human Rights Committee on Ireland's Fourth Periodic Report under the ICCPR – List of Issues Stage*, 2013; Irish Human Rights Commission, *Presentation by Irish Human Rights Commission to Oireachtas Joint Committee on Justice, Defence and Equality 13 November 2013 Recognition of Traveller Ethnicity*, 2013; The Equality Authority, *Traveller Ethnicity: An Equality Authority Report*, 2006, [http://www.ihrec.ie/download/pdf/traveller\\_ethnicity.pdf](http://www.ihrec.ie/download/pdf/traveller_ethnicity.pdf).

<sup>iv</sup> Houses of the Oireachtas Joint Committee on Justice, Defence and Equality, *Report on the Recognition of Traveller Ethnicity*, 2014, <http://www.oireachtas.ie/parliament/media/committees/justice/Report-onTraveller-Ethnicity.pdf>.

<sup>v</sup> Holland, K., 'Traveller ethnicity will be reality in six months, says Ó Riordáin', *Irish Times*, 19 November 2014,

<http://www.irishtimes.com/news/social-affairs/traveller-ethnicity-will-be-reality-in-six-months-says-%C3%B3-riord%C3%A1in-1.2005945>.

<sup>vi</sup> It is important that these cuts are considered in comparison to the overall reduction in government spending of -4.3% during the period 2008-2013, in Harvey, B., *Travelling with Austerity: Impacts of cuts on Travellers, Traveller Projects and Services*, Dublin, Pavee Point Publications, 2013. Harvey notes "one can think of no other section of the community which has suffered such a high level of withdrawal of funding and human resources, compounded by the failure of the state to spend even the limited resources that it has made available".

