



Travellers Accommodation Investigation

Terms of Reference

1. Introduction

Having undertaken a scoping exercise in June 2016, drawing on a body of research and mapping of policy and legislation, the Northern Ireland Human Rights Commission (the Commission) has decided to conduct an investigation into Travellers accommodation in Northern Ireland (the Investigation). This investigation is in accordance with Section 69(8) of the Northern Ireland Act 1998, under which the Commission may carry out such investigations as considered necessary or expedient in fulfilling its statutory functions.

The Investigation will examine the right to adequate housing, as a component of the right to an adequate standard of living, with a view to obtaining the experiences of those directly affected including Travellers, representatives of professional organisations, voluntary and community organisations. The Investigation will focus on a number of areas in respect of Traveller accommodation in line with standards outlined in international human rights law:

- **Legal Security of tenure:** whether Traveller accommodation in Northern Ireland respects human rights standards in respect of security of tenure and protection against forced eviction, harassment and other threats;
- **Availability of services, materials, facilities and infrastructure:** whether Traveller accommodation includes access to services essential for health, security, comfort and nutrition. These include sanitation, safe drinking water, washing facilities,

energy for cooking, heating and lighting, refuse disposal, site drainage and emergency services;

- **Affordability:** whether Traveller accommodation costs are at a financial level that the attainment and satisfaction of other basic needs are not threatened or compromised;
- **Habitability:** whether Traveller accommodation is habitable and provides physical safety and protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors;
- **Accessibility:** whether Traveller accommodation is fully and sustainably accessible without discrimination to those entitled to it and takes into account housing needs;
- **Location:** whether Traveller accommodation is free from pollution and allows access to employment options, healthcare, schools and childcare centres and other social centres; and
- **Cultural Adequacy:** whether Traveller accommodation in its construction, building materials and the policies supporting these enable the expression of cultural identity and diversity of housing.
- **Participation:** whether Travellers have been extensively and genuinely consulted on the provision of Traveller accommodation. This includes involving the Traveller community, associations and representations at the earliest stages in the development and implementation of the policies and programmes affecting them. There also must be sufficient transparency about policies and programmes related to Traveller accommodation.
- **Remedy:** whether Travellers have an effective remedy regarding decisions in relation to accommodation.
- **Monitoring:** whether effective monitoring of the situation with respect to Traveller accommodation taken place. This includes whether appropriate indicators and benchmarks are used and appropriately disaggregated.

The Council of Europe uses the term 'Roma and Travellers' to encompass a wide range of groups.¹ Similarly European Union policy documents relevant to nomadic peoples, the term Roma encompasses a diverse range of groups that include names like Roma, Gypsies, Travellers, Manouches, Ashkali, Sinti and Boyash.²

For the purposes of this investigation 'Travellers' are defined as members of the Irish Traveller community, a "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".³ This investigation will focus on all those living or seeking to live in Traveller accommodation. The accommodation referred to includes any form of accommodation inhabited by members of the Traveller community. This can include serviced sites, transit sites, cooperated site, emergency halting sites, unauthorised sites, grouped housing, social housing, privately owned property and privately rented property.⁴

The Commission is investigating Traveller accommodation with a particular focus on the right to adequate housing. It recognises that the realisation of adequate housing may have significant secondary impacts upon other human rights, including the right to the highest attainable standard of health and the right to education. Questions regarding traveller accommodation have persisted over a number of years. The United Nations Committee on Economic, Social and Cultural Rights and the United Nations Committee on the Elimination of all forms of Racial Discrimination have made recommendations on this subject. The Commission has also called for changes in legislation, policy and practice.

For the purposes of the Investigation, the Commission will access information from public authorities, including statistical data, relevant policies, complaints and other documentation. The process will also involve evidence gathering from members of the public, experts and those responsible for service delivery, primarily derived from interviews.

The Investigation will be launched in September 2016 and fieldwork will take place throughout Northern Ireland between October and December 2016. The Commission will consider the evidence gathered and publish a final report in August 2017, as required by Section 69(8A) of the Northern Ireland Act 1998. Conclusions and recommendations for action necessary for the promotion and protection of human rights will be presented to the

Northern Ireland Executive and Legislative Assembly in accordance with Sections 69(1) and (3) of the Northern Ireland Act 1998.

2. Background

Fulfilling each person's right to adequate housing in Northern Ireland requires the Northern Ireland Executive and other relevant public authorities to ensure "legal security of tenure", "availability of services, materials, facilities and infrastructure", "affordability", "habitability", "accessibility" and "cultural adequacy".⁵ This right requires that housing is in a "location which allows access to employment options, health-care services, schools, childcare centres and other social facilities".⁶ It also includes the requirements to provide "legal protection against forced eviction, harassment and other threats".⁷ Broadly defined, the right to adequate housing is "the right to live somewhere in security, peace and dignity".⁸

Reflective of the obligations contained within the right to adequate housing, there is a requirement to offer "Travellers places for their caravans, with all necessary facilities"⁹ and to provide housing that "appropriately enable[s] the expression of cultural identity and diversity of housing",¹⁰ including housing that accommodates Travellers' nomadic lifestyle. It is recognised that:

[t]he vulnerable position of Gypsies [and Travellers] as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases... To this extent, there is thus a positive obligation... to facilitate the Gypsy [and Traveller] way of life.¹¹

There is a link between the right to adequate housing and the right to equality and non-discrimination. This requires that no discrimination exists in relation to the "supply", "allocation" and "occupation" of housing.¹² There is also a requirement to ensure that any evictions that do take place are non-discriminatory.¹³ There must be "proper justification for the serious interference", such as a "pressing social need" or that it is "proportionate to the legitimate aim being pursued".¹⁴

Within the UK, including Northern Ireland, there is a “shortage of adequate stopping sites for Roma/Gypsies and Irish Travellers”.¹⁵ The Northern Ireland Housing Executive (NIHE) reported in 2014 that, within Northern Ireland, there is a gross need for 18 units of grouped accommodation¹⁶, 28 serviced site pitches, two transit site pitches, 51 units of social housing and 13 units of other accommodation forms.¹⁷ Since 2011 the NIHE has made four planning applications for Traveller accommodation, with three accepted. One application relating to the Rathenraw site is currently being appealed.¹⁸ There is a legislative anomaly that requires the NIHE to obtain site licences from local councils, which “can create practical difficulties in ensuring adequate site provision”.¹⁹ The NIHRC received information from the Department for Communities (formerly Department for Social Development) in March 2016 that there was one pending site licence application before Craigavon Borough Council and at that time the application had not yet been granted.²⁰ The United Nations Committee on Economic, Social and Cultural Rights (CESCR) has expressed concern that “the lack of social housing has forced households to move into the private rental sector, which is not adequate in terms of affordability, habitability, accessibility and security of tenure”.²¹ The CESCR has also expressed concern at how the Unauthorised Encampments (Northern Ireland) Order 2005 “makes Roma/Gypsies and Irish Travellers liable to be evicted from their homes, to have their homes destroyed and then to be imprisoned and/or fined”.²² The Committee has called for this legislation to be repealed.²³ The UN Committee on the Elimination of Racial Discrimination has also noted with concern, the exclusion and discrimination experienced by Roma, Gypsies and Travellers in the fields of housing, health, education and employment and called for a “systematic and coherent approach” in addressing these challenges.²⁴

Research has found that the overall standard of Traveller accommodation has been inadequate. A quarter of Traveller respondents residing in Northern Ireland consider their place of residence to be unhealthy or very unhealthy, with 29 percent describing their residence as unsafe.²⁵ A lack of footpaths, public lighting, fire hydrants, safe play areas, plumbing, washing facilities, electricity and refuse management has been reported.²⁶ The CESCR has expressed concern that “Travellers continue to face barriers in accessing adequate and culturally appropriate accommodation across [the UK], with adequate access to basic services, such as water and sanitation”²⁷ and has continuously called for “the provision of

sufficient, adequate and secure” culturally appropriate accommodation to be ensured.²⁸

The Commission completed a scoping exercise in June 2016; taking into account completed work on Traveller accommodation in Northern Ireland.²⁹ On the basis of that exercise, we concluded that a human rights examination of this issue is necessary. The scoping exercise found that further investigation of the issue has potential public appeal, addresses the experiences of the most vulnerable, and is a broad systemic issue. It noted that there is reasonable prospect of change and impact given the plethora of literature highlighting sub-standard and inadequate site provision.

The evidence suggests that inadequate conditions, supply and regulation of Travellers accommodation affect Travellers’ right to adequate housing and their right to equality and non-discrimination. Whilst the barriers faced by Travellers in accessing accommodation are well documented in a number of recent reports,³⁰ much of the discourse has not been extensively analysed through a human rights lens. The extent to which the Northern Ireland Executive and other relevant public authorities are fulfilling the rights to adequate housing and non-discrimination in relation to Traveller accommodation is therefore the focus of the Commission’s investigation.

3. What does the Investigation aim to achieve?

The Investigation aims to:

- Identify the legal, policy and regulatory framework in Northern Ireland relating to Travellers’ accommodation;
- Identify the extent to which the human rights of Travellers’ in respect of accommodation are realised in practice;
- Identify good practice, as well as recommendations for improvements that aim to ensure human rights are respected, protected and fulfilled; and
- Increase public’s awareness of human rights generally and in the specific context of Travellers accommodation.

4. Methodology of Investigation

It is envisaged that preliminary research will be conducted in September 2016 and fieldwork will commence in early October 2016. A critical aspect of the fieldwork will involve access to the Traveller Community for interview, focus groups and via surveys. The Commission will write to organisations working with the Traveller Community to negotiate access. Roundtable discussions will also be conducted with representatives of organisations working with the Traveller Community in the charitable, voluntary and community sector.

The Commission will also analyse statistical data, policy documents and other relevant documentation. The Commission will formally write to the relevant Ministers, the Chief Executive of the Northern Ireland Housing Executive, housing associations, local councils and other relevant public authorities to request that they furnish the Commission with the relevant data.

The Investigation will be carried out by:

- A review of literature and relevant domestic, regional and international human rights standards and case law;
- A review of domestic legislation, policy and regulatory framework;
- An analysis of available statistical, qualitative, resource and budgetary material affecting Travellers in respect of accommodation;
- Interviews with relevant officials from the Department for Communities;
- Interviews with relevant officials in the Department for Infrastructure regarding planning powers;
- Interviews with relevant officials from the Northern Ireland Housing Executive and Housing Associations;
- Interviews with relevant officials from local councils;
- Interviews with relevant local councillors;
- Interviews with Police Service of Northern Ireland;
- Interviews with the Fire Service of Northern Ireland;
- Interviews with officials in Planning Appeals Commission;
- Access to records where there has been a positive decision or refusal to grant site licences or planning permission;

- Roundtable discussions with representatives of organisations working with the Traveller Community in the charitable, voluntary and community sector; and
- Interviews with representatives from the Traveller Community, via individual interviews and/or focus groups.

5. Timeline

The Investigation begins in September 2016 and ends in August 2017.

Endnotes

¹ For example, see CRI (2011)13 ECRI 'General Policy Recommendation on Combating Anti-Gypsyism and Discrimination against Roma' adopted 24 June 2011

² For example see example 2013/C 378/01 of the European Union Council Recommendation of 9 December 2013 on effective Roma integration measures in the Member States, para 6

³ Article 5(2)(a), Race Relations (NI) Order 1997.

⁴ Northern Ireland Housing Executive, 'Traveller Accommodation Needs Assessment 2014' (NIHE, 2014), at 10; Available at http://www.nihe.gov.uk/index/advice/advice_for_travellers/accommodation.htm (Last visited 22 August 2016).

⁵ E/1992/23, 'CESCR General Comment No 4: The Right to Adequate Housing', 13 December 1991, at para 8.

⁶ E/1992/23, 'CESCR General Comment No 4: The Right to Adequate Housing', 13 December 1991, at para 8.

⁷ E/1998/22, 'CESCR General Comment No 7: The Right to Adequate Housing – Forced Evictions', 20 May 1997, para 1.

⁸ E/1992/23, 'CESCR General Comment No 4: The Right to Adequate Housing', 13 December 1991, at para 8.

⁹ CERD, 'General Recommendation XXVII on Discrimination Against Roma' 16 August 2000, at para 32.

¹⁰ E/1992/23, 'CESCR General Comment No 4: The Right to Adequate Housing', 13 December 1991, at para 8.

¹¹ *Chapman v United Kingdom* (2001) ECHR 43, at para 96.

¹² European Commission, 'Discrimination in Housing' (European Commission, 2013), at 5.

¹³ E/1998/22, 'CESCR General Comment No 7: The Right to Adequate Housing – Forced Evictions', 20 May 1997, para 10.

¹⁴ *Connors v United Kingdom* (2004) ECHR 223, at paras 94-95.

¹⁵ E/C.12/GBR/CO/5, 'Concluding Observations of the CESCR: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories', 22 May 2009, at para 30.

¹⁶ Gross need means additional need for accommodation, however this is caveated by complications when people move on. For example, the Traveller Accommodation Needs Assessment 2014 noted that the development of grouped housing might release the number of units on a serviced site and therefore the net need is a more complex calculation, Northern Ireland Housing Executive, 'Traveller Accommodation Needs Assessment 2014' (NIHE, 2014), at 11

¹⁷ Northern Ireland Housing Executive, 'Traveller Accommodation Needs Assessment 2014' (NIHE, 2014), at 29.

¹⁸ Information obtained from DSD (March 2016).

¹⁹ NIHRC, 'Northern Ireland Human Rights Commission Submission to the UN Committee on Economic, Social and Cultural Rights 58th Session on the Sixth Periodic Report of the United Kingdom's Compliance with ICESCR' (NIHRC, April 2016), at 59.

²⁰ Information obtained from DSD (March 2016).

²¹ E/C.12/GBR/CO/5, 'Concluding Observations of the CESCR: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories', 22 May 2009, at para 30; E/C.12/GBR/CO/6, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 24 June 2016, at para 49.

²² E/C.12/GBR/CO/5, 'Concluding Observations of the CESCR: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories', 22 May 2009, at para 30; E/C.12/GBR/CO/6, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 24 June 2016, at para 49.

²³ E/C.12/GBR/CO/6, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 24 June 2016, at para 50.

²⁴ CERD/C.GBR/CO/21-23 'Concluding Observations on the twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland', 26 August 2016 at para 25 (a)

²⁵ Equality and Human Rights Commission, 'Outlining Minimum Standards for Traveller Accommodation' (ECNI, 2009), at 9-10.

²⁶ Safa Abdella et al, 'Our Geels: All Ireland Traveller Health Study' (UCD, 2010), at 46; NICEM, 'The Annual Human Rights and Racial Equality Benchmarking Report 2013/14' (OFMDFM, 2014), at 96.

²⁷ E/C.12/GBR/CO/5, 'Concluding Observations of the CESCR: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories', 22 May 2009, at para 30; E/C.12/GBR/CO/6, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 24 June 2016, at para 49.

²⁸ E/C.12/GBR/CO/5, 'Concluding Observations of the CESCR: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories', 22 May 2009, at para 30; E/C.12/GBR/CO/6, 'Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 24 June 2016, at para 50.

²⁹ OFMDFM, 'A Shared Future – Policy and Strategic Framework for Good Relations in Northern Ireland' (OFMDFM, 2005); OFMDFM, 'A Racial Equality Strategy for Northern Ireland 2005-2010' (OFMDFM, 2005); Equality Commission for Northern Ireland, 'Statement on Key Inequalities in Northern Ireland' (ECNI, 2007); Chris Johnson and Marc Willers (eds), *Gypsy and Traveller Law* (Legal Action Group, 2007) Equality Commission for Northern Ireland, 'Outlining Minimum Standards in Traveller Accommodation' (ECNI, 2009); Safa Abdella *et al*, 'Our Geels: All Ireland Traveller Health Study' (UCD, 2010); Department of the Environment, 'Planning Policy Statement 12: Housing in Settlements' (DoE, 2013); Northern Ireland Housing Executive, 'Traveller Accommodation Needs Assessment' (NIHE, 2014); NICEM, 'The Annual Human Rights and Racial Equality Benchmarking Report 2013/14' (OFMDFM, 2014); Alison Wallace, 'Housing and Communities' Inequalities in Northern Ireland' (University of York, 2015); Equality Commission for Northern Ireland, 'Key Inequalities in Housing and Communities' (ECNI, 2016).

³⁰ For example, Equality Commission for Northern Ireland, 'Draft Statement on Key Inequalities in Housing' (ECNI, March 2016); Geraldine Scullion and Sheila Rodgers 'Traveller Voices for Change: Mapping the view of Irish Travellers on integration and their sense of belonging in Northern Ireland' (2014).